TRADE AND COOPERATION AGREEMENT

BETWEEN

QUÉBEC and ONTARIO

September 2009

TABLE OF CONTENTS

PREAMBLE

The Governments of Ontario and Québec,

RESOLVED to:

FORM an economic partnership that will foster their economies and build opportunities for their citizens;

STRENGHTEN the Ontario-Québec economic region within North America and internationally;

WORK together collaboratively to seize opportunities in a globally competitive marketplace;

ESTABLISH a comprehensive agreement aimed at eliminating and reducing barriers that restrict trade, investment and labour mobility;

COOPERATE to prevent unnecessary new barriers to trade, investment and labour mobility;

EXCHANGE ideas and coordinate solutions on broad economic issues and challenges facing their economies and establish common economic priorities;

MAINTAIN and enhance policies governing labour, the environment, consumer protection standards, health, education, culture and economic development; and

PROMOTE sustainable development based on cooperation and mutually supportive environmental and economic policies including innovation for a green economy.

HEREBY AGREE as follows:

PART I

GENERAL

Chapter One

Objectives

Article 1.1: Objectives

1. The objectives of this Agreement are to:

   (a) Form an economic partnership aimed at enhancing economic integration between the Parties and at ensuring markets are open, efficient and stable within the Ontario-Québec region;

   (b) Build on the significant history of cooperation between the Parties to address economic challenges and opportunities together in an open and cooperative manner to increase economic competitiveness and prosperity;

   (c) Reduce and eliminate, to the greatest extent practicable, barriers to the movement of persons, goods and services and to investments and investors between the Parties to a higher degree than that achieved in the *Agreement on Internal Trade*;

   (d) Enhance regulatory cooperation through greater transparency, dialogue and consultation;

   (e) Establish effective procedures for the settlement of disputes between the Parties; and

   (f) Promote sustainable development.

2. The Parties agree that this Agreement represents a reciprocally and mutually agreed balance of rights and obligations.

Article 1.2: Mutually Agreed Principles

1. The Parties agree that the operation of this Agreement shall be guided by the following principles:

   (a) Economic competitiveness and prosperity are achieved best through the collaborative reduction and elimination of barriers to trade in goods and services, the movement of persons and investment;

   (b) Imposition of new barriers offends the spirit of economic and regulatory cooperation;

(c) Reconciliation of existing measures that have been identified as barriers to trade, labour mobility or investment, recognizing that measures need not be identical, strengthens the economic partnership;

(d) Transparent, open, inclusive and accountable administrative policies and decision-making processes, based on the best available scientific and other information should be fostered; and

(e) The integrity and diversity of social and cultural communities must be respected.

2. In applying the principles set out in paragraph 1, the Parties recognize the need:

(a) for full disclosure of measures that have the potential to impede an open, efficient and stable market between the Parties;

(b) for transition periods and exceptions;

(c) to provide adequate administrative, dispute settlement and compliance mechanisms that are accessible, timely, credible and effective; and

(d) to take into account the importance of labour standards, environmental objectives, consumer protection, health, education, culture and economic development.

Article 1.3: Extent of Obligations

1. This Agreement applies to measures of the Parties and their government entities that affect trade in goods and services, investors and investments, labour mobility and economic, energy and regulatory cooperation.

2. Each Party is responsible for compliance with this Agreement by its government entities.

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

4. This Agreement applies to regional, district, local or other forms of municipal government only where specifically provided.

Article 1.4: Relationship to the *Agreement on Internal Trade* and Other Agreements

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 the *Agreement on Internal Trade*.

2. In the event of an inconsistency between any provision in Parts II (Cooperation), III General Rules) and IV (Specific Commitments and Rules) 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 shall prevail. 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 shall be incorporated into and made part of this Agreement.

3. The Parties may agree in writing to modify the Agreement to incorporate a provision referred to in paragraph 2.

4. The Parties reaffirm their existing rights and obligations with respect to each other under the agreements set out in Annex 1.4. For greater certainty, the agreements set out in Annex 1.4 are not incorporated into this Agreement.

5. In the event of any inconsistency between this Agreement and an agreement set out in Annex 1.4, the agreement in Annex 1.4 shall prevail to the extent of the inconsistency, unless otherwise provided.

6. The Parties may agree in writing to modify Annex 1.4 to include any amendment to an agreement set out in the Annex, to remove an agreement from the Annex or to include another agreement in the Annex.

Article 1.5: Reaffirmation of Constitutional Powers and Responsibilities

Nothing in this Agreement alters the legislative authority of the provinces or of the governments of the provinces or the rights of either of them with respect to the exercise of their legislative or other authorities under the *Constitution Act, 1867*.

Annex 1.4

Agreements

1. *Interconnection Agreement between Hydro-Québec and Ontario Hydro*
   Signature Date: February 1, 1979
   Entry into force: June 1, 1978

2. *An Agreement respecting reciprocity in the matter of registration of certain motor vehicles between the Government of Ontario and the Government of Québec*
   Signature Date: *Unknown*
   Entry into force: April 8, 1983

3. *Reciprocal Agreement between the Provinces of Ontario and Québec concerning Drivers' Licences and Traffic Offences*
   Signature Date: November 8, 1988
   Entry into force: April 1, 1989

4. *The Ontario-Québec Vehicle, Vehicle Weights and Dimensions Harmonization Agreement*
   Signature Date: August, 2000
   Entry into force: January, 2001

5. *Protocol for Cooperation between the Government of Ontario and the Government of Québec*
   Signature Date: June 2, 2006
   Entry into force: June 2, 2006

6. *Agreement for Cooperation on Culture between the Government of Ontario and the Government of Québec*
   Signature Date: June 2, 2006
   Entry into force: June 2, 2006

7. *Agreement for Cooperation on Emergency Management between the Government of Ontario and the Government of Québec*
   Signature Date: June 2, 2006
   Entry into force: June 2, 2006

8. *Agreement Concerning Transboundary Environmental Impacts between the Government of Ontario and the Gouvernement du Québec*
   Signature Date: June 2, 2006
   Entry into force: June 2, 2006

9. *Agreement for Cooperation on Forest Protection between the Government of Ontario and the Government of Québec*
   Signature Date: June 2, 2006
   Entry into force: June 2, 2006

10. *Agreement for Cooperation and Exchanges between the Government of Ontario and the Government of Québec with respect to Francophone Affairs*
Signature Date: June 2, 2006
Entry into force: June 2, 2006

11. *Agreement for Cooperation on Health Care between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2006
Entry into force: June 2, 2006

12. *Agreement to Promote Sustainable Development of Crown Land and Natural Resources between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2006
Entry into force: June 2, 2006

13. *Agreement for Cooperation on Tourism between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2006
Entry into force: June 2, 2006

14. *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2006
Entry into force: June 2, 2006

15. *Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2006
Entry into force: June 30, 2006

16. *Memorandum of Understanding between the Government of Ontario and the Government of Québec on Energy*
Signature Date: June 2, 2008
Entry into force: June 2, 2008

17. *Memorandum of Understanding between the Government of Ontario and Government of Québec concerning a Provincial-Territorial Cap and Trade Initiative*
Signature Date: June 2, 2008
Entry into force: June 2, 2008

18. *Agreement for Cooperation on Youth between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2008
Entry into force: June 2, 2008

19. *Agreement for Cooperation on Social Services between the Government of Ontario and the Government of Québec*
Signature Date: June 2, 2008
Entry into force: June 2, 2008

PART II

COOPERATION

Chapter Two

Economic Cooperation

Article 2.1: Objectives

1. The Parties agree to establish conditions for an increasingly integrated economy in the Ontario-Québec region, one that sustains and promotes a business environment that is more responsive to economic challenges and opportunities and that promotes greater trade, productivity, competitiveness and prosperity through enhanced synergy between the Parties.

2. The Parties agree to build a more integrated economy where business connections are strengthened and where economic cooperation promotes greater coherence and complementarity of government policies and measures between the Parties.

3. The Parties agree to engage in closer economic cooperation for the purposes of generating investment and creating high-value jobs in the Ontario-Québec region through the:

   (a) creation of joint institutional mechanisms to facilitate the implementation of the Agreement;

   (b) initiation of joint projects aimed at strengthening economic cooperation in key sectors; and

   (c) development of a more integrated infrastructure aimed at strengthening the economic network throughout the Ontario-Québec region.

Article 2.2: Ministerial Council

1. Each Party shall designate the Minister responsible for economic development as the Minister responsible for this Agreement.

2. The Parties shall establish a Ministerial Council comprising the Minister of each Party responsible for the Agreement, who shall preside over the activities of the Ministerial Council.

3. The Ministerial Council shall:

   (a) supervise the implementation of and adherence to the Agreement by the Parties;

(b) oversee any further negotiations or amendments to the Agreement;

(c) assist in the resolution of disputes arising out of the interpretation and application of the Agreement;

(d) consult with and invite other Ministers to participate in its meetings, as deemed necessary;

(e) initiate further negotiations to reduce barriers to trade, investment and labour mobility;

(f) ensure, where practicable, cohesion on economic policy decisions related to the Agreement and other economic policies of the Parties;

(g) promote consistency and complementarity on decisions related to large-scale infrastructure projects that benefit both Parties;

(h) provide a forum for strategic discussions about joint solutions to common economic challenges and opportunities;

(i) request, receive and consider reports from the Secretariat, the Joint Committee on Regulatory Cooperation, the Private Sector Advisory Committee and all other committees and working groups created under this Agreement, including reports issued pursuant to commitments set out Part IV (Specific Commitments and Rules);

(j) manage trade barrier reduction, cooperative activities and projects under the Agreement and consider the adoption of additional activities and projects; and

(k) consider any other matter that could affect the operation of the Agreement.

4. The Ministerial Council:

(a) shall be convened annually in regular session and be chaired successively by each Party; and

(b) may be convened in special session at any time at the agreement of both Parties.

Article 2.3: Secretariat

1. The Ministerial Council shall establish and oversee a Secretariat, comprised of Sections.

2. Each Party shall:

(a) establish a permanent office of its Section within its Ministry responsible for the Agreement;

(b) be responsible for the operation and costs of its Section; and

(c) designate an individual to serve as Section Secretary, who shall be responsible for the Section's administration and management.

3. The Secretary Chair shall be the Section Secretary whose Minister currently chairs the Ministerial Council.

4. The Secretariat shall:

(a) assist and support the Ministerial Council in the fulfillment of its obligations;

(b) prepare and organize, under the direction of the Secretary Chair, the regular and special meetings of the Ministerial Council;

(c) circulate decisions made by the Ministerial Council at its regular and special sessions;

(d) provide administrative support to dispute settlement Panels established under Chapter 12 (Dispute Resolution);

(e) create a repository for reports and other information submitted by Ministers, committees and groups under the Agreement;

(f) establish an enquiry point within each Section capable of responding to requests for information from the public about matters covered by the Agreement; and

(g) as the Ministerial Council directs:

(i) support the work of committees and groups established under this Agreement;

(ii) facilitate an annual economic forum;

(iii) foster cooperation and create synergy between business leaders, public officials and academic circles, notably through an annual forum between academic institutions in Ontario and Québec;

(iv) oversee special projects, such as joint trade missions or joint participation in trade fairs and other international fora; and

(v) otherwise facilitate the operation and management of the Agreement.

Article 2.4: Private Sector Advisory Committee[1]

1. The Parties shall establish a Private Sector Advisory Committee consisting of private sector representatives from each Party.

[1] As modified by the September 2010 First Protocol of Amendment

2. The Private Sector Advisory Committee shall be composed of at least ten members, with an equal number of members being chosen by each Party.

3. The Ministerial Council shall:

   (a) on an annual basis, appoint one member from Quebec and one member from Ontario of the Private Sector Advisory Committee to be the chairpersons of the Private Sector Advisory Committee; and

   (b) invite the Private Sector Advisory Committee to:

      (i) advise the Ministerial Council on matters pertaining to activities under Article 2.5;

      (ii) advise the Ministerial Council on other matters concerning the Agreement; and

      (iii) report to the Ministerial Council at each annual meeting.

Article 2.5: Economic Cooperation Activities

1. The Parties agree to pursue the cooperation activities set out in the Agreement.

2. The Parties agree to further develop and implement the cooperative activities outlined in Annex 2.5.

3. The Parties agree to identify and undertake additional economic cooperation activities and priority initiatives as directed by the Ministerial Council and may modify Annex 2.5 accordingly.

4. The Parties agree to establish a working group to evaluate how to maximize economic benefits to the Ontario-Québec region of their respective governments' procurement policies. The working group shall report on its findings to the Ministerial Council no later than twelve (12) months after the entry into force of the Agreement.

Article 2.6: Investment

1. The Parties reaffirm their commitments to reduce and eliminate barriers to investment under Chapter 6 (Investment) of the *Agreement on Internal Trade*.

2. The Parties agree to create a working group to examine the following:

   (a) the need to strengthen investor rights;

   (b) the need to reduce investment distortions arising from government support in the context of this Agreement; and

(c) the requirements listed in Annex 604.4 (Local Presence and Residency Requirements) of the *Agreement on Internal Trade* and whether such requirements should be retained, removed or replaced.

3. The Parties agree that the working group established to examine the items in paragraph 2 shall report to the Ministerial Council on their findings within twelve (12) months of the entry into force of the Agreement.

Article 2.7: Definitions

In this Chapter:

Secretary Chair means the chairperson of the Secretariat;

Section(s) means each Party's section of the Secretariat, comprised of the appointed representatives of each Party; and

Section Secretary means the person appointed by each Party pursuant to Article 2.3(2)(c).

Western Climate Initiative is an initiative, launched in February 2007, comprised of seven U.S. governors and four Canadian Premiers, in order to identify, evaluate, develop and implement collective and cooperative ways to reduce greenhouse gases in the region, focusing on a broad market-based cap-and-trade system as part of this comprehensive regional effort.

Annex 2.5

Cooperation Activities

A. Manufacturing and Other Selected Sectors

1. The Parties agree that their manufacturing sectors face significant and common challenges. As such, the Parties agree to:

   (a) make joint representations to the federal government regarding issues of mutual concern;

   (b) take steps to facilitate the necessary adjustment of the manufacturing sector throughout the region, taking into account the comparative advantages of each Party;

   (c) enhance the brand image of the manufacturing sector, which has suffered due to job losses, particularly among the young skilled workforce.

2. The Parties agree to work together under the auspices of the Western Climate Initiative. In doing so, the Parties agree to compare and evaluate the actions of their respective manufacturing sectors regarding the management of greenhouse gas emissions.

3. The Parties agree to investigate other sectors of mutual interest to determine common issues and areas of collaborative industrial cooperation.

B. Innovation Corridors

1. The Parties recognize the important economic contribution of innovation corridors, which are networks between businesses and public research organizations. These networks collaborate on common projects in the field of innovation and are funded both publicly and privately.

2. Cooperation in the field of innovation will make the Ontario-Québec region more competitive and more attractive to foreign investment. Accordingly, the Parties agree to develop and pursue, where appropriate, joint activities:

   (a) designed to attract foreign investment in innovation, with the clear understanding that each Party may determine its own policies in this regard; and

   (b) to assess the strengths of selected sectors in the Ontario-Québec region in the area of innovation for the purposes of undertaking joint marketing of such sectors to demand markets abroad.

3. The Parties agree that the cooperation objectives with respect to innovation corridors are to:

   (a) intensify innovation capabilities;

(b) alleviate trade and investment barriers arising from the existence of conflicting or duplicative administrative requirements;

(c) foster cross-regional networking among business, universities and research centres; and

(d) provide developing businesses with a larger support network.

4. The Parties agree to:

(a) foster the creation of innovation corridors for the following sectors:

(i) life sciences;

(ii) optical photonics; and

(iii) clean technologies;

(b) develop a joint proposal for cooperation in each of the sectors set out in paragraph (a) in cooperation with the private sector, including the Private Sector Advisory Committee, based on the objectives set out in paragraph 3;

(c) fund jointly a study assessing the Ontario-Québec regional market in one or more of the above sectors; and

(d) assess other sectors for the purposes of creating additional innovation corridors.

C. Infrastructure

1. To facilitate a more integrated economic region, the Parties undertake to plan the development of infrastructure, including joint services, systems and facilities, in a spirit of enhanced cohesion and complementarity.

2. The Parties agree to improve the integration of transportation infrastructure with a view to achieving greater interconnectivity of existing transportation networks.

3. In pursuit of the objectives in paragraph 2, the Parties agree to give priority to the following projects in collaboration with the federal government:

(a) feasibility of a high-speed rail link connecting Windsor and Québec City; and

(b) a joint Ontario-Québec transportation strategy as part of the Ontario-Québec Continental Gateway and Trade Corridor.

D. Environmental Cooperation

1. The Parties agree to work together to provide leadership in the areas of environment and sustainable development by giving priority to the promotion of information exchange and joint cooperation related to transboundary environmental impacts in accordance with the *Agreement Concerning Transboundary Environmental Impacts between the Government of Ontario and the Gouvernement du Québec*; and

2. The Parties agree to work together, co-operatively and with other provinces, territories and states, to provide leadership in the areas of environment and sustainable development by giving priority to the development of a regional greenhouse gas emissions trading system, in accordance with the *Memorandum of Understanding between the Government of Ontario and the Government of Québec concerning a Provincial-Territorial Cap and Trade Initiative* and the proposed design principles of the Western Climate Initiative, and that seeks to align with the emerging North American system, to facilitate the transition to a low carbon economy and to encourage technological innovation, economic growth and job creation in the green economy.

E. Tourism

1. The Parties recognize the important economic contribution of their tourism sectors and that increased cooperation and collaborative initiatives in this sector would lead to economic gains for both Parties.

2. The Parties agree to:

   (a) make joint representations to the federal government regarding issues of mutual concern; and

   (b) undertake joint tourism marketing activities.

Chapter Three

Regulatory Cooperation

Article 3.1: Enhancing Regulatory Cooperation

1. The Parties agree that regulatory dialogue and cooperation have the potential to enhance their relationship, strengthen the ability of each Party to protect the public and the environment, promote economic efficiencies and improve the overall quality of regulatory governance.

2. The Parties shall, to the extent possible:

   (a) consult on regulatory development and requirements;

   (b) exchange information on regulatory matters;

   (c) conduct joint research on regulations and their impacts, especially on business, trade and investment;

   (d) compare regulatory methods and instruments;

   (e) examine opportunities for reconciliation, harmonization, mutual recognition or other ways of minimizing differences in existing and future regulation;

   (f) reconcile regulatory requirements and conformity assessment; and

   (g) participate cooperatively in national, regional and international standards and regulatory development organizations to which they belong.

3. Each Party shall encourage regulatory bodies whose regulatory requirements must be approved by a Party to cooperate and share information as provided in paragraph 2.

Article 3.2: Legislative Cooperation

As much as possible and without interfering with the privileges of the Ontario Legislature or Québec National Assembly, the Parties agree to share information and comments on their legislative intents with a view to minimizing the creation of obstacles to trade and movement of goods, services, persons and investment between the territories of the two Parties.

Article 3.3: Scope and Coverage

1. Subject to paragraph 2, this Chapter applies to regulatory requirements made or approved under an Act of the Legislature by the Lieutenant Governor-in-Council or by a Minister.

2. Article 3.5 applies only to a regulatory requirement made or approved under an Act of the Legislature by the Lieutenant Governor-in-Council, but does not apply to a regulatory requirement that concerns expenditures.

Article 3.4: Regulatory Policy and Principles

1. Each Party shall establish a Cabinet-endorsed policy regarding the overall development and administration of regulatory requirements based on the principles and rules set out in paragraphs 2 and 3.

2. The Parties agree that their regulatory requirements:

   (a) respond to a clearly identified need for regulation;

   (b) are developed and implemented in a transparent manner;

   (c) are designed to be least trade restrictive;

   (d) are based on assessed risks, costs and benefits and minimized impacts on a fair, competitive and innovative market economy;

   (e) minimize differences and duplication, where appropriate, between the Parties;

   (f) are results-based, where appropriate and to the extent practicable;

   (g) are timely and reviewed on a routine basis and are not maintained if the need giving rise to their adoption no longer exists; and

   (h) are made easily accessible and written in language that can be easily understood by the public.

3. In the process of adopting or reviewing a regulatory requirement, each Party shall assess the impacts of the requirement on investors and investments of the other Party and on trade and labour mobility between the Parties.

4. Each Party shall provide a copy of its Cabinet-endorsed policy to the other and make it available to the public.

Article 3.5: Transparency

1. Each Party shall ensure that regulatory requirements respecting any matter covered by the Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. Subject to paragraphs 4 and 5**,** where a proposed regulatory requirement may have a significant effect on the access of persons, goods, services or investments of another Party, each Party shall:

   (a) publish in advance the regulatory text and a summary of the expected impacts of any such regulatory requirement that it proposes to adopt;

(b) provide the other Party and interested persons from the other Party a reasonable opportunity and a minimum period of forty-five (45) days to comment on such proposed regulatory requirements;

(c) accept written comments from ministerial authorities of the other Party on the effects of the proposal on investors and investments of the other Party and on trade or labour mobility between the Parties and take the comments into account;

(d) on request, discuss the comments with the other Party and take the results of the discussions into account; and

(e) on request, explain the reasons behind any decision not to adopt the other Party's comments.

3. Further to paragraph 2,

(a) Ontario shall post regulatory proposals subject to paragraph 2 on the Regulatory Registry.

(b) Québec shall post regulatory proposals subject to paragraph 2 in the *Gazette Officielle du Québec*.

(c) Neither Party shall charge a fee for on-line access by the Regulatory Coordinator of the other Party to the publications referred to in paragraphs (a) and (b).

4. Where a Party considers it necessary to address an urgent problem, it may omit any step set out in paragraphs 2 and 3, provided that on adoption of a regulatory requirement it shall:

(a) immediately provide to the other Party information of the type required under paragraph 2, including a brief description of the urgent problem;

(b) on request, provide a copy of the measure to the other Party; and

(c) allow the other Party to make comments in writing and, on request, discuss the comments.

5. Paragraphs 2 and 3 do not apply to measures:

(a) relating to taxation, except for regulatory requirements relating to administrative processes and formalities attached to the collection of fiscal revenues, including fees and royalties, by government; or

(b) where as a consequence of statutory requirements, the publication of a proposed regulatory requirement would adversely affect the administration or operation of a government program.

6. Where a Party allows non-governmental persons in its territory who may suffer prejudicial economic consequences as a result of the adoption of a regulatory requirement to intervene in the regulatory development process, that Party shall allow the same privilege to non-governmental persons from the other Party who may suffer similar consequences.

Article 3.6: Joint Committee on Regulatory Cooperation

1. The Parties shall establish a Joint Committee on Regulatory Cooperation, composed of representatives from each Party.

2. The Joint Committee on Regulatory Cooperation shall:

   (a) meet at least once per year and on request of a Party;

   (b) report annually to the Ministerial Council on its activities and on the implementation of this Chapter.

3. The functions of the Joint Committee on Regulatory Cooperation shall include:

   (a) monitoring the implementation and administration of this Chapter, including the progress of subcommittees and working groups established under paragraph 4;

   (b) identifying areas where regulations conflict, overlap, are duplicated or are otherwise incompatible and reporting annually to the Ministerial Council;

   (c) facilitating cooperation among regulators and their efforts to harmonize, mutually recognize or otherwise make compatible their regulatory measures;

   (d) enhancing cooperation on the development, application and enforcement of regulatory measures; and

   (e) monitoring non-governmental, regional, national and international developments regarding regulation and regulatory governance;

4. The Joint Committee on Regulatory Cooperation may, as it considers appropriate, establish and determine the scope and mandate of subcommittees or working groups, comprising representatives of each Party and other interested persons as appropriate.

Article 3.7: Regulatory Coordinator

1. Each Party shall designate a Regulatory Coordinator who will co-chair the Joint Committee on Regulatory Cooperation.

2. Each Party shall ensure that the Regulatory Coordinator responds to all reasonable inquiries from the other Party, and provides relevant information and documents regarding:

(a) any regulatory requirement proposed, adopted or maintained in its territory;

(b) access to notices published pursuant to Article 3.5, or information where such notices may be obtained; and

(c) the follow-up of comments made by the other Party pursuant to Article 3.5.

Article 3.8: Entry into Force

This Chapter shall enter into force six (6) months following the entry into force of the Agreement.

Article 3.9: Definitions

In this Chapter:

Regulatory requirement:
For Ontario, means a regulation subject to Part III of the *Legislation Act, 2006* Chapter 21, Annex F; and
For Québec, means a regulation subject to the *Regulations Act*, *RSQ, Chapter R-18.1*;

Regulatory bodies means non-governmental bodies and organizations that have been provided delegated regulatory authority by the Legislature of a Party;

Regulatory Coordinator means the coordinators designated pursuant to Article 3.7 of this Agreement; and

Regulatory Registry means the public internet site maintained by the Government of Ontario on which regulatory proposals that may affect business are posted, located at:
http://www.ontariocanada.com/registry.

Chapter Four

Energy Cooperation

Article 4.1: Purpose

The Parties recognize that it is desirable to strengthen the important role that cooperation in energy policies plays in the Ontario-Québec economic region.

Article 4.2: Scope and Coverage

This Chapter applies to cooperation in energy policies.

Article 4.3: Objectives

1. The primary objectives of this Chapter are to improve the economic efficiency of the energy sector and to increase the reliability of energy supply and energy infrastructure, within Ontario and Québec.

2. The Parties shall jointly promote enhanced inter-jurisdictional cooperation in energy policies and a modern, reliable, and environmentally responsible and efficient series of energy transmission and transportation networks.

Article 4.4: Cooperation

The Parties agree to cooperate and coordinate their efforts in order to achieve the objectives set out under Article 4.3, including their best efforts to:

(a) improve knowledge-sharing on energy efficiency, conservation and demand management, and to identify and act on opportunities for harmonization of related standards, codes and programs;

(b) work toward joint technological and policy development for emerging and renewable energy technologies, including exploration of opportunities for joint research and research networks on renewable energy, and opportunities for shared ownership and commercialization of joint research;

(c) mandate their respective Entities to explore ways to enhance interconnectedness for clean and renewable energy exchanges, based on identifying and addressing financial, institutional and physical barriers to those exchanges;

(d) build on the synergies between the electricity systems of the Parties and work towards more interconnected electricity systems by identifying and acting on opportunities to improve planning coordination, co-operation on energy system operations, and encouragement of greater electricity interconnectedness, where practical;

(e) continue to explore opportunities and develop principles for co-operation during energy emergencies and enhanced cooperation during emergency reliability situations; and

(f) explore principles and opportunities for the development and harmonization of broader regional energy systems, including extra-jurisdictional co-operation where practical.

Article 4.5: Transparency

1. The Parties agree that transparent energy markets and systems contribute to greater efficiency and effectiveness, are conducive to greater cooperation and collaboration, reduce the risk of misunderstanding and facilitate the sharing of information and ideas.

2. Each Party shall provide a contact person to answer all reasonable enquiries from the other Party and to provide relevant information regarding any energy measure that is proposed, adopted or maintained by its Government.

Article 4.6: Energy Cooperation Activities

1. The Parties agree to pursue the cooperative activities listed in Article 4.4 and to implement a work plan no later than six (6) months following the entry into force of the Agreement.

2. The Parties agree to identify and undertake additional energy cooperation activities as directed by Energy Ministers.

Article 4.7: Cooperation by Ministers Responsible for Energy

1. The Ministers of each Party responsible for energy are responsible for this Chapter and shall meet at the request of a Party.

2. Ministers may make amendments to this Chapter, subject to the endorsement of the Ministerial Council.

3. Ministers shall:

(a) monitor the implementation and management of this Chapter;

(b) assist in the resolution of issues;

(c) provide a forum for discussion about joint solutions to common energy challenges and opportunities;

(d) receive and consider reports from the Energy Cooperation Committee;

(e) oversee the program of energy cooperation activities under the Chapter and consider the adoption of additional activities and projects; and

(f) participate, as necessary, in the activities and meetings of the Ministerial Council.

Article 4.8: Energy Cooperation Committee

1. The Parties agree to create an Energy Cooperation Committee to be co-chaired by the Parties.

2. Each Party shall designate a senior official who shall co-chair the Committee.

3. The Committee shall:

   (a) assist and support Ministers in the fulfillment of their obligations under the Chapter;

   (b) oversee the day-to-day implementation and management of the Chapter;

   (c) identify opportunities and develop options for consideration by Ministers for additional cooperative activities; and

   (d) report annually to Ministers.

Article 4.9: Definitions

In this Chapter:

Entities mean those governmental bodies, agencies, corporations, or other institutions under the direct purview of the government regulating prices and supply conditions of energy goods.

Ministers means Ministers of each Party responsible for energy

PART III

GENERAL RULES

Chapter Five

General Rules

Article 5.1: Application

The general rules established under this Chapter apply only to matters covered by Part IV (Specific Commitments and Rules), 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 5.2: No Obstacles

Subject to Article 5.7, each Party shall ensure that any measure it adopts or maintains does not operate to create an obstacle to trade, investment and labour mobility between the Parties.

Article 5.3: Right of Entry and Exit

Subject to Article 5.7, no Party shall adopt or maintain any measure that restricts or prevents the movement of persons, goods, services or investment between the Parties.

Article 5.4: Reciprocal Non-discrimination

1. Subject to Article 5.7, each Party shall accord to goods of the other Party, treatment no less favourable than the best treatment it accords to its own like, directly competitive or substitutable goods or those of any non-Party.

2. Subject to Article 5.7, each Party shall accord to persons, services, investors and investments of the other Party, treatment no less favourable than the best treatment it accords, in like circumstances, to its own persons, services, investors and investments or those of any non-Party.

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

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

Article 5.5: Official Language

Nothing in this Agreement shall be construed to require a Party to communicate, publish text or provide particulars or copies of documents other than in an official language of the Party

Article 5.6: Non-Disclosure

Nothing in this Agreement shall be construed to require a Party to disclose any information that by law is not subject to disclosure.

Article 5.7: Legitimate Objectives

1. A measure inconsistent with Articles 5.2, 5.3 or 5.4 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 to trade, investment or labour mobility.

2. The legitimate objectives accepted by the Parties are:

   (a) public security, safety and infrastructure integrity;

   (b) public order;

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

   (d) protection of the environment;

   (e) consumer protection;

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

   (g) affirmative action programs for disadvantaged groups;

   considering, among other things, where appropriate, fundamental climactic or other geographical factors, technological or infrastructure factors, or scientific justification.

3. For greater certainty, paragraph 2 may be amended by a provision in Part IV.

PART IV

SPECIFIC COMMITMENTS AND RULES

Chapter Six

Labour Mobility

Article 6.1: Objective

1. The objective of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility between the Parties 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 the relevant regulatory authority of the other Party.

2. For the purposes of this Chapter, a reference to a Party adopting or maintaining a measure or standard, regulating an occupation, or agreeing to certify a worker, includes such action by a regulatory authority of a Party.

Article 6.2: Scope and Coverage

1. Annex 6.2 sets out those occupations for which workers in the occupation who are certified by the relevant regulatory authority of a Party shall be recognized as qualified for certification in the same occupation by the relevant regulatory authority of the other Party.

2. This Chapter applies to the occupations set out in Annex 6.2. In particular, this Chapter applies to measures adopted or maintained by a Party for a regulated occupation identified in Annex 6.2 relating to:

   (a) residency requirements for workers as a condition of certification relating to a worker's occupation;

   (b) certification requirements, other than residency requirements, for workers in order to practise an occupation or use a particular occupational title; and

   (c) occupational standards.

3. This Chapter does not apply to measures pertaining to language requirements or social policy measures including labour standards and codes, minimum wages and social assistance.

4. This Chapter applies to the occupations set out in Annex 6.2 on the date this Agreement comes into effect except where compliance with respect to one or more of the occupations requires statutory or regulatory amendment, in which case this Chapter

applies to that occupation upon the coming into force of the required regulatory and/or legislative amendments.

Article 6.3: Relationship to Other Agreements

1. A Party may enter into labour mobility agreements with other jurisdictions. A Party shall notify the other Party when negotiating such agreements so that the other Party may assess the implications for and propose possible amendments to this Chapter.

2. If there is any inconsistency between a provision of this Chapter and any provision regarding labour mobility in the *2006 Agreement* or the *Agreement on Internal Trade*, the provision that is most favourable to labour mobility shall prevail to the extent of the inconsistency.

Article 6.4: Residency Requirements

No Party shall require a worker of the other Party to be resident in its territory as a condition of certification relating to the worker's occupation.

Article 6.5: Certification of Workers

1. Subject to paragraphs 3 and 4, any worker certified for an occupation by a regulatory authority of one Party shall, upon application, be certified for that occupation by the relevant regulatory authority of the other Party without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

2. Subject to paragraphs 3 and 4, a Party shall recognize any worker holding a jurisdictional certification in a trade designated Red Seal under the Interprovincial Standards Red Seal Program in both jurisdictions as qualified to practise the occupation identified in the certification.

3. A regulatory authority of a Party may, as a condition of certification for any worker referred to in paragraphs 1 and 2 , impose requirements on that worker, other than requirements for material additional training, experience, examinations or assessments, including:

   (a) payment of an application or processing fee;

   (b) obtaining insurance, malpractice coverage or similar protection;

   (c) posting a bond;

   (d) undergoing a disciplinary or criminal background check;

   (e) providing evidence of good character;

(f) demonstrating knowledge of the measures maintained by that Party applicable to the practice of the occupation in its territory; or

(g) providing a certificate, letter or other evidence from the regulatory authority in that territory in which they are currently certified confirming that their certification in that territory is in good standing;

provided that any requirement referred to in paragraphs (a) to (g):

(h) is 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) does not create a disguised restriction on labour mobility.

4. Nothing in paragraphs 1, 2 or 3 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 practise 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 practised the occupation within a specified period of time; or

(c) 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 any measure referred to in paragraphs (a) to (c):

(d) is the same as, or substantially similar to but no more onerous than, that imposed by the regulatory authority on its own workers; and

(e) does not create a disguised restriction on labour mobility.

Article 6.6: Occupational Standards

1. A 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. The Parties agree, however, to the extent possible and where practical, to pursue steps to reconcile differences in occupational standards.

2. If a Party considers it necessary to establish new standards or to make changes to any existing standards in respect of an occupation, the Parties agree that the process for establishing or making such changes shall occur in a manner conducive to labour mobility. In doing so, the Party shall notify the other Party and afford it an opportunity to comment on the modification of those standards.

Article 6.7: Implementation, Administration and Assessment

The Parties agree to establish a Joint Labour Mobility Committee that shall:

(a) consist of the Assistant Deputy Ministers or equivalent officials, or their designates, responsible for labour mobility for each Party;

(b) meet at least once a year;

(c) be comprised of a minimum of six (6) members, with an equal number of members from each Party, with each Party designating a co-chair; and

(d) monitor progress in achieving full labour mobility between the Parties and the implementation of this Chapter, including the complaints referral process identified in Article 6.8.

Article 6.8: Complaints Referral Process

1. This Article applies to the avoidance and resolution of disputes originating from a Party regarding the interpretation or application of this Chapter.

2. The Parties shall each designate an Official Contact to receive complaints about the interpretation or application of this Chapter.

3. An Official Contact for each Party may delegate in writing his or her responsibilities under this Chapter to a person employed in the ministry responsible for labour mobility.

4. If a worker certified for an occupation by a regulatory authority of one Party is denied certification by the relevant regulatory authority of the other Party or is asked to undergo any material additional training, experience, examinations or assessments by such regulatory authority, the worker shall attempt to resolve the matter using any existing dispute resolution process established by that regulatory authority. Such process must be exhausted before the affected worker may request the assistance of the Official Contact of the province where the worker is certified.

5. Upon receiving a request for assistance by a worker pursuant to paragraph 4, if the Official Contact is of the opinion that the decision of the regulatory authority is inconsistent with a provision of this Chapter, the Official Contact who received the request for assistance shall, without delay, contact the Official Contact of the other Party who, in turn, shall request the reasons for the regulatory authority's decision from the regulatory authority and shall share those reasons with the other Official Contact.

6. If both Official Contacts agree that the decision of the regulatory authority is consistent with the Chapter, the Official Contact who received the request for assistance shall inform the worker immediately.

7. If both Official Contacts agree that the decision of the regulatory authority is inconsistent with this Chapter, they will make all reasonable efforts to have the complaint resolved by the appropriate officials of the regulatory authority within twenty (20) days.

8. Notwithstanding paragraph 7, if the Official Contacts disagree or an Official Contact considers that the complaint is not resolved to his or her satisfaction, a Party may request in writing at any time that the Joint Labour Mobility Committee review the complaint.

9. The Joint Labour Mobility Committee shall appoint an expert selected by mutual agreement within fifteen (15) days. The expert shall have knowledge of the relevant occupation, labour mobility obligations or such other expertise as may be relevant to the complaint or a combination thereof. The expert must be bilingual. The cost of the expert's work will be shared equally by both Parties.

10. The expert shall provide an opinion on whether or not a Party has satisfied the obligations of this Chapter and provide a recommendation to resolve the complaint to the Joint Labour Mobility Committee. The expert shall provide his or her opinion and recommendation to the Joint Labour Mobility Committee within fifteen (15) days of his or her appointment.

11. Following receipt of the opinion and the recommendation of the expert, the Parties shall make every possible effort to resolve the dispute in a manner consistent with the expert's opinion and recommendation. If the Parties fail to resolve the dispute within 30 days of receiving the expert's opinion and recommendation, a Party has recourse to the dispute resolution mechanism set out in Chapter 12 (Dispute Resolution).

Article 6.9: Amendments to Annexes

1. The annexes to this Chapter may be amended at any time by mutual consent of the Parties.

2. An agreement to amend an annex shall be confirmed in an exchange of letters between the relevant Assistant Deputy Ministers, or their delegates, from the ministry of each Party responsible for labour mobility. A copy of an exchange of letters shall be conveyed to the Secretariat.

3. Notwithstanding paragraph 2, the Parties agree that any amendment to Appendix 1 of the *2006 Agreement* shall constitute an amendment to Annex 6.2 of this Agreement and the Parties shall update Annex 6.2 to reflect such amendment forthwith.

4. Notwithstanding paragraph 2, if a Party supports an application by an occupation listed in Annex 6.2 of this Chapter for an exception based on a legitimate objective under the *Agreement on Internal Trade* that excludes workers from one or the other Parties to this Chapter, that occupation shall be removed from Annex 6.2.

Article 6.10: Definitions

In this Chapter:

2006 Agreement means the *Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry between the Government of Ontario and the Government of Québec*, signed on June 2, 2006;

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 practise 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 practise that occupation;

Interprovincial Standards Red Seal Program means the certification of skilled tradespersons based on common interprovincial standards as administered by the Canadian Council of Directors of Apprenticeship.

Joint Labour Mobility Committee means the committee established pursuant to Article 6.7;

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;

Official Contact means the persons designated as official contacts of each Party pursuant to Article 6.8;

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; and

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

Annex 6.2

(This annex is currently being updated**)**

Chapter Seven

Financial Services

Article 7.1: Application of General Rules

1. Article 5.4 (Reciprocal Non-discrimination) does not apply to this Chapter.

2. Article 5.3 (Right of Entry and Exit) applies to this Chapter in accordance with Article 7.5.

Article 7.2: Objective

The Parties shall promote an efficient, open, sound and fair financial services sector within the Ontario-Québec region. The Parties agree that:

(a) an efficient, open sector provides for a wide range of choices for lenders, borrowers, and consumers and allows for timely execution on the best terms of investing and borrowing opportunities, and supports long-term development of innovation in the marketplace.

(b) a sound sector promotes confidence in the stability of financial service providers individually and collectively which is key to all economic transactions, and especially to enabling the saving, investing, and risk management, which are necessary for economic growth.

(c) a fair sector provides investors and consumers with adequate information to assess their obligations and risks, promotes market confidence, meets appropriate standards and in the extreme deters some potential causes of market turmoil.

Article 7.3: Scope and Coverage

1. Subject to Article 7.8, this Chapter applies to new regulatory measures adopted by a Party that relate to or impact:

(a) financial services;

(b) financial institutions of the other Party;

(c) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory;

(d) cross-border trade in financial services; and

(e) the education, experience, licensing, standards or certification of financial services intermediaries licensed in the other Party.

2. This Chapter does not apply to existing measures, including the continuation, amendment or renewal by a Party of an existing measure, to the extent that an amendment does not lessen the conformity of the measure to the Agreement as the measure existed immediately before the amendment.

Article 7.4: Reciprocal Non-discrimination

1. A Party shall permit a financial institution of another Party to provide any new financial service that the Party permits its own financial institutions, in like circumstances, under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided by a financial institution of another Party and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for reasons identified as legitimate objectives under Article 5.7 (Legitimate Objectives) or Article 7.6.

2. Each Party shall endeavour to promote regulatory systems that provide comparable treatment to financial service providers of the other Party.

Article 7.5: Right of Entry and Exit

In applying Article 5.3, the Parties agree that right of entry for financial service providers of another Party shall be based on compliance with the laws of the Party to which the provider is seeking entry. Nothing in this Agreement shall give a financial services provider an automatic right of entry to provide financial services in the other Party based solely on compliance with the home jurisdiction's laws, unless explicitly provided for in legislation.

Article 7.6: Legitimate Objectives

In addition to the legitimate objectives set out in Article 5.7(2), each Party may maintain and adopt measures deemed appropriate for prudential reasons, such as:

(a) protecting investors, depositors, financial market participants, policy-holders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;

(b) maintaining the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

(c) ensuring the integrity and stability of a Party's financial system.

Article 7.7: Co-operation and Co-ordination

1. The Parties agree to undertake periodic reviews of legislation in a coordinated timeframe and to share information with the intent to promote harmonized approaches to regulation in the areas set out in paragraph 1 of Annex 7.7 and such other areas as may be agreed by the Financial Services Committee established under Article 7.9.

2. The Parties agree to keep each other apprised of intentions to change regulations or adopt new regulations regarding financial services.

3. The Parties agree to develop work plans as set out in paragraph 2 of Annex 7.7 and on further topics as agreed by the Financial Services Committee.

4. The Parties agree to give policy consideration to the items set out in paragraph 3 of Annex 7.7.

5. Where appropriate, the Financial Services Committee shall take note of policy considerations being raised in domestic, multilateral and international fora.

6. This Article is not subject to the dispute resolution mechanism set out in Chapter 12 (Dispute Resolution).

Article 7.8: Exceptions

This Chapter does not apply to existing and new measures:

(a) affecting the existence of financial services regulators of the Parties; or

(b) with respect to the regulation of automobile insurance contracts or rates.

Article 7.9: Establishment of Financial Services Committee

1. The Parties agree to establish an on-going Financial Services Committee that shall:

(a) work jointly on periodic legislative and regulation reviews;

(b) keep one another informed as to policy changes in respective jurisdictions; and

(c) seek to promote harmonized approaches to regulation in the areas set out in Annex 7.7 and in such areas as may be agreed to by the Financial Services Committee.

2. The Financial Services Committee shall be comprised of senior government officials from each Party.

3. Each Party shall provide appropriate resources to the Financial Services Committee and will support the Financial Services Committee with any necessary information.

Article 7.10: Non-Disclosure

Further to Article 5.6 (Non-Disclosure), nothing in this Agreement requires a Party to furnish or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers.

Article 7.11: Dispute Resolution

1. Subject to Article 7.7(6), Chapter 12 (Dispute Resolution) applies, as modified by this Article and Article 7.12, to the resolution of disputes arising under this Chapter.

2. For a dispute arising under this Chapter, Panelists appointed by the Parties or the Secretariat pursuant to Article 12.5 (Establishment of Presiding Body) shall select a chairperson from the financial services experts roster, established under Article 7.12.

3. If Presiding Body members are unable to agree on a chairperson with the required expertise from the roster established under Article 7.12, the Panelists or the Secretariat, as the case may be, may seek and appoint a qualified chairperson from the public at large.

4. In the event that the Party complained against justifies its actions under Article 5.7 or Article 7.6, the Presiding Body is strongly encouraged to seek and to give appropriate weight to an independent assessment about the validity of the justification from an independent, non-biased financial expert with expertise in the subject area at issue.

Article 7.12: Financial Services Experts Roster

1. The Parties shall establish and maintain a roster of up to five (5) individuals who are willing and able to serve as chairpersons for Presiding Bodies established for disputes under this Chapter. Financial services roster members shall be appointed by consensus and may be reappointed.

2. In determining the suitability of roster candidates, the following qualifications shall be taken as proof of financial services expertise or experience:

   (a) an extensive career in the relevant area of financial services;

   (b) senior leadership roles in private industry and/or the government ministry/department overseeing financial services (that is, the Ministry of Finance in Ontario and the *Ministère des Finances* in Québec) and/or a relevant financial services regulatory body; or

   (c) an extensive background in corporate, administrative and/or financial services regulatory law.

3. In addition to having expertise or experience in financial services regulation, financial services roster members shall:

   (a) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

   (b) meet the qualifications set out in Chapter 12.

Article 7.13: Definitions

In this Chapter:

Bank for International Settlements means the international organization which was established to foster international monetary and financial cooperation and which serves as a bank for central banks;

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) funds management;

(f) securities;

(g) derivatives; and

(h) all forms of financial or market intermediation including, but not limited to, the distribution of financial products;

Financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the laws of the Party in whose territory it is located and includes but is not limited to:

(a) a loan or trust corporation;

(b) an insurer;

(c) a credit union or *caisse populaire*; and

(d) an entity primarily engaged in dealing in securities, including portfolio management and investment counselling;

Financial Services Committee means the committee established under Article 7.9 of this Chapter;

Financial Services Provider means a person that is engaged in the business of providing a financial service and includes financial institutions; and

Presiding Body means, as the case may be, a Panel, Compliance Panel or Appellate Panel as set out in Article 12.20 (Definitions).

Annex 7.7

Cooperation and Co-ordination Items

1. The Parties agree to undertake periodic reviews of legislation in a coordinated timeframe and to share information with an intent to promote harmonized approaches to regulation in the following areas:

   (a) derivatives;

   (b) credit unions;

   (c) mortgage brokers;

   (d) insurance; and

   (e) securities.

2. The Parties agree to develop, within twenty-four (24) months from the entry into force of the Agreement, work plans regarding:

   (a) collaboration on financial and consumer literacy initiatives targeted at the general public and financial services professionals;

   (b) the harmonisation of credit union regulation in several areas, including group models of capital adequacy regulation based on Bank for International Settlements' rules and pledging;

   (c) a draft reciprocal agreement that would allow Québec *caisses populaires* and *fédérations* and Ontario credit unions and leagues to do business in either province**;**

   (d) mortgage broker errors and omissions insurance standards and broker and agent education requirements;

   (e) insurance distribution regulation, including the harmonisation of education requirements for insurance agents;

   (f) the harmonisation of classes of insurance;

   (g) insurance business powers concerning deposit-taking;

   (h) the development of a common approach to derivatives regulation, with full regard for collaboration with the other Canadian provinces.

3. The Parties agree to give policy consideration to:

   (a) Ontario providing a public commitment not to, at this time, extend its approach to loan and trust corporations to the insurance sector; and

   (b) the federal government's proposal to establish cooperative banks.

Chapter Eight

Transportation

Article 8.1: Objective

The objective of this Chapter is to enhance the competitiveness and sustainability of the Ontario-Québec economic region by:

(a) improving the movement of people and goods by reducing or otherwise reconciling regulations and standards related to transportation services;

(b) enhancing transportation safety, security and environmental protection by fostering the use of innovative technologies; and

(c) facilitating ongoing cooperation between the Parties in order to streamline transportation related operations between the Parties and to ensure new barriers to trade do not arise.

Article 8.2: Scope and Coverage

1. Subject to Article 8.5, this Chapter applies to measures of a Party that relate to the movement of people and goods.

2. The Parties shall, as applicable, take the necessary steps to assist in ensuring compliance by their respective regional, local, district and other forms of municipal government with the measures listed in the annexes to this Chapter. The Ministry of Transportation for Ontario and the *Ministère des Transports du Québec* shall, as applicable, consult with their respective forms of municipal government prior to taking such steps.

Article 8.3: Reconciliation

1. The Parties shall continue to reconcile the measures listed in Annex 1408.1 (Reconciliation) of the *Agreement on Internal Trade* that are outstanding and set out in paragraph 1 of Annex 8.3.

2. The Parties agree to reconcile, in addition to the measures set out in paragraph 1, the measures set out in paragraph 2 of Annex 8.3.

3. The Parties agree that Québec will assess the possibility of reconciling the exempted measures set out in Annex 1410.1 (Listed Measures) of the *Agreement on Internal Trade* that are set out in paragraph 3 of Annex 8.3.

Article 8.4: Cooperation

The Parties agree to work closely in relation to the measures of mutual interest set out in Annex 8.4 to share related information and best practices on a regular basis, and to pursue common objectives through joint initiatives.

Article 8.5: Exemptions

This Agreement does not apply to:

(a) an existing measure maintained by a Party and set out in Annex 8.5; and

(b) an amendment to a measure referred to in paragraph (a), to the extent that the amendment does not add to the restrictions imposed by the measure as it existed immediately before the amendment.

Article 8.6: Transportation Coordination Committee

1. The Parties agree to establish a Transportation Coordination Committee having as members the Deputy Ministers responsible for Transportation in Ontario and Québec, and any other persons designated by the Deputy Ministers.

2. The Transportation Coordination Committee shall:

(a) monitor and facilitate the implementation of this Chapter;

(b) consider and discuss matters relating to the implementation, operation and further elaboration, including any amendment of this Chapter;

(c) ensure that any necessary consultation, pursuant to Article 8.2(2), is carried out;

(d) 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 other issues to which this Chapter applies;

(e) facilitate the sharing of information and best practices between the Parties;

(f) explore new opportunities for cooperation and joint research;

(g) involve, as appropriate, other government and non-governmental entities in the implementation of the Chapter;

(h) provide the Ministers responsible for Transportation in Ontario and Québec with necessary support for their annual meeting pursuant to Article 8.8;

(i) establish, through the co-chairs, any committees, working groups or expert groups that it considers necessary or advisable to fulfill the intent of this Chapter; and

(j) delegate any of its duties or responsibilities under this Chapter to committees established by the co-chairs.

3. The Deputy Ministers responsible for Transportation in Ontario and Québec shall be the co-chairs of the Transportation Coordination Committee.

4. The Transportation Coordination Committee shall meet once a year, or more frequently at the request of the co-chairs.

Article 8.7: Annual Meeting of Parties and Key Stakeholders

The Parties agree to review issues annually with key stakeholders using their existing meeting process and consider further opportunities for reconciliation and cooperation on regulations and standards. Each Party may send a representative to attend the other Party's meetings with key stakeholders.

Article 8.8: Annual Meeting of Ministers

The Parties agree to hold a meeting once a year between the Ministers responsible for Transportation in Ontario and Québec to review this Chapter and the 2006 *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*, and to discuss issues of mutual interest.

Article 8.9: Definition

In this Chapter:

Transportation Coordination Committee means the Transportation Coordination Committee described in Article 8.6(1).

Article 8.10: Relationship to Other Agreements

In the event of any inconsistency between this Agreement and the 2000 *Ontario-Québec Vehicle, Vehicle Weights and Dimensions Harmonization Agreement* or the 2006 *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*, or both, this Agreement shall prevail to the extent of the inconsistency.

Annex 8.3

Measures for Reconciliation

1. *Agreement on Internal Trade* – Outstanding Measures

(a) Vehicle Weights and Dimensions

The Parties reiterate their commitments under the 1988 *Memorandum of Understanding Respecting Federal-Provincial-Territorial Agreement on Vehicle Weights and Dimensions, as* amended in 1991, 1994, 1997, 2004 and 2008. In compliance with the objectives and principles of this Agreement, the Parties shall continue to amend it as deemed necessary by the Task Force on Vehicle Weights and Dimensions of the Council of Deputy Ministers Responsible for Transportation and Highway Safety.

(b) Motor Carrier Safety Standards

The Parties agree to continue, as part of their participation as members of the Canadian Council of Motor Transport Administrators, updating and reconciling the standards from the *National Safety Code for Motor Carriers* which was implemented pursuant to the *Agreement on Internal Trade*.

(c) Memorandum of Understanding on Regulatory Review

Pursuant to paragraph 8 of Annex 1408.1 (Reconciliation) of the *Agreement on Internal Trade*, 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 continue to bring the process envisaged by that memorandum of understanding into operation.

1. New Measures

(a) School Buses

The Parties agree, as of December 31, 2010, to reconcile their regulations respecting school buses consistent with current Canadian Standards Association school buses D250 standard. Thereafter, the Parties agree to review amended or new versions, or both, of any D250 standard and assess whether their regulations should be reconciled with such standard.

(b) Speed Limiters

Limiting the speed of commercial vehicles prevents collisions, reduces greenhouse gas emissions, helps protect our environment and keeps communities and families safer. The Parties have reconciled their regulations as of January 1, 2009. In addition, the Parties agree to conduct an awareness campaign for the use of speed limiters in both provinces and fully implement enforcement measures by July 1, 2009.

(c) Single Wide Tires

The Parties agree to continue reconciling their measures concerning allowable axle-weights for the use of energy efficient single wide tires on the most common truck configurations.

(d) Long Combination Vehicles Programs

Ontario agrees to develop a program to permit the use of energy efficient long combination vehicles under carefully controlled requirements. The Parties agree to work together to reconcile their programs to the greatest extent possible. The Parties agree that respective Deputy Ministers of Transportation, as co-chairs of the Transportation Coordination Committee (as described in Article 8.6), shall sign a letter of intent describing the specific elements of their programs. The Parties agree to provide the Transportation Coordination Committee with annual status updates.

(e) Vehicle Weights and Dimensions

The Parties agree to further reconcile vehicle weights and dimensions regulations between themselves in order to enhance efficiency. This work will build upon the *Agreement on Internal Trade* (as further described in paragraph 1 of this Annex, the 2000 *Ontario-Québec Agreement on Vehicle Weights and Dimensions,* and the 2006 *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*. The Parties agree to develop a work plan for the implementation of this commitment, and to provide the Transportation Coordination Committee with annual status updates.

(f) Streamline the Operation of Transportation Services

The Parties agree to reduce unnecessary technical and economic barriers to trade related to the operation of transportation services through greater reconciliation of regulations and operations with a view to creating an even playing field for operators and shippers. This work builds on the *2006 Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec* and the spirit of the *Agreement on Internal Trade*. The Parties agree to develop a work plan for the implementation of this commitment and to provide the Transportation Coordination Committee with annual status updates.

3. Further Reconciliation - Québec Measures Previously Exempted from the *Agreement on Internal Trade*

(a) Transport of People by Bus

The Parties agree to work closely to better understand and assess each other's inspection processes. The Parties also agree, within one year of entry into force of this Agreement, to report back to the Transportation Coordination Committee with a status update of their assessment. Subject to the above assessment and to reconcile its measures, Québec agrees to eliminate, within two years of entry into force of this Agreement, the requirement for a permit holder from Ontario to maintain a business place in Québec (*Transport Act* (R.S.Q., c. T-12) and the *Bus Transport Regulation* ([T-12, r. 21.2]; O.C. 191-86, (1987) 119 *G.O*. 2, 24)).

(b) Transport of Passengers by Water

Québec agrees to assess the possibility of eliminating its requirement for a permit holder from Ontario to maintain a domicile or an establishment in Québec (*Transport Act* (R.S.Q., c. T-12)). Québec also agrees, within one year of entry into force of this Agreement, to report back to the Transportation Coordination Committee with a status update of its assessment. Subject to the above assessment, Québec agrees to reconcile its measure within two years of entry into force of this Agreement.

Annex 8.4

Cooperation Measures

1. High Speed Rail

The Parties agree to update feasibility studies, in collaboration with the federal government, that examine the costs and benefits of a high-speed rail link between Québec City and Windsor. The update of the feasibility studies is targeted for late 2009.

2. Continental Gateway

The Parties agree to continue working with the federal government and other public and private sector partners to develop a strategy for an effective multimodal integrated transportation system that supports international and inter-provincial trade development by facilitating the movement of people and goods in the Ontario-Québec Continental Gateway and Trade Corridor. This work builds upon the 2006 *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*. The release of the strategy is targeted for late 2009.

3. Travel Information Systems

The Parties agree to work towards aligning travel information systems between themselves that will provide motorists and road users with traffic information and travel related conditions and activities that affect travel time, reliability and safety, as well as available services. This work will build upon the 2006 *Agreement Concerning Transportation Cooperation between the Government of Ontario and the Government of Québec*. The Parties agree to develop a work plan for the implementation of this measure and to provide the Transportation Coordination Committee with annual status updates.

4. Emergency Response Coordination

The Parties agree to improve the coordination of joint incident response and assistance in areas such as border areas, public transit and emergency situations and share best practices as appropriate. The Parties agree to develop a work plan for the implementation of this measure and to provide the Transportation Coordination Committee with annual status updates.

5. Accessibility for Transit and Motor Coaches

The Parties agree to share best practices in the areas of public transit vehicles and related infrastructure and motor coaches accessibility that could provide persons with disabilities access to more opportunities and greater independence. The Parties agree to develop a work plan for the implementation of this measure and to provide the Transportation Coordination Committee with annual status updates.

Annex 8.5

Exempted Measures

1. Québec

(a) Transportation of People

Bus Transport Regulation ([T-12, r. 21.2]; O.C. 1991-86, (1987) 119 *G.O.* 2, 24), relating to the public interest criteria for entry; *Regulation respecting the transport of passengers by water* ([T-12, r. 21.01]; O.C. 147-98, (1998) 130 *G.O.* 2, 1205), relating to the issuance of a permit if a real and urgent necessity for an additional service is established; *An Act respecting transportation services by taxi* (R.S.Q., c. S-6.01), relating to the obligation to notify the "Commission des transports" before transferring any taxi owner's permit; *Taxi Transportation Regulation* ([S-6.01, r. 2]; O.C. 690-2002, (2002) 134 *G.O.* 2, 2602), relating to the public interest criteria for entry and to the limit of twenty (20) taxi permits per person; *An Act respecting intermunicipal boards of transport in the area of Montréal* (R.S.Q., c. C-60.1), relating to the possibility to make a public-transport-service contract without calling for tenders; *Transport Act* (R.S.Q., c. T-12), relating to the possibility for a local municipality to make a public-transport-service contract without calling for tenders; *Education Act* (R.S.Q., c. I-13.3) and *Regulation respecting student transportation* ([I-13.3, r.12]; O.C. 647-91, (1991) 123 *G.O.* 2, 1699), relating to the authorisation to negotiate a student-transportation contract without calling for tenders.

(b) Transportation of Goods

Regulation respecting the brokerage of bulk trucking services ([T-12, r. 3.3]; O.C. 1483-99, (1999) 131 G.O. 2, 5079), relating to brokerage services; *Regulation respecting forest transport contracts* ([T-12, r. 3.1.1]; O.C. 708-2000, (2000) 132 *G.O.* 2, 2787), relating to carrier contracts.

2. Ontario

(a) Public Vehicles

Public Vehicles Act, R.S.O., c .P. 54, Sections 5, 6, 6.1, 7 and 8, relating to the public necessity and convenience test for the issuance and transfer of a public vehicle operating license.

(b) Taxicabs, Liveries and Buses

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 areas.

Chapter Nine[2]

Public Procurement

Article 9.1: Objectives

1. The objectives of this Chapter are to:

   (a) establish a framework that will ensure equal access to procurement by all Ontario and Québec 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; and

   (b) foster a climate of collaboration in public procurement in order to respond to public demand for governments to be environmentally, economically and socially responsible.

2. The provisions of this Chapter shall not be interpreted as granting any rights, creating any obligations or conferring any benefits to governments, government entities, suppliers, enterprises, persons, products, services or investments that are not of a Party.

Article 9.2: Relationship to Other Chapters of the Agreement

1. Except for Articles 5.5 and 5.6, Chapter 5 (General Rules) does not otherwise apply to this Chapter.

2. Chapter 12 (Dispute Resolution) applies to the resolution of disputes arising under this Chapter but does not apply to complaints initiated under Article 9.19 (Bid protest procedures).

3. Article 14.5 (Regional Economic Development) does not apply to this Chapter.

Article 9.3: Definitions

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

buying group means a group of two or more members that 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;

[2] As modified by the September 2015 Second Protocol of Amendment

Canadian good means a good produced exclusively from domestic materials, a good manufactured in Canada or a good that, 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;

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: research and development; sales and marketing; communications and manuals; customization and modifications; installation and support; warehousing and distribution; training; and after-sales service.

With respect to Article 9.6(4), the preference for Canadian value-added 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.

Committee means the Committee on Government Procurement established by Article 9.22;

construction service means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

financial service has the same meaning as that set out in Chapter 7 (Financial Services), Article 7.13 (Definitions);

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;

in writing or **written** means any worded or numbered expression that can be read, reproduced and later communicated, including electronically transmitted and stored information;

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offset means any condition or undertaking that encourages local development, such as the use of local content, the licensing of technology, investment, or other economic benefits criteria that are designed to favour local goods, services or suppliers;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

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 process is the process that begins after an entity has decided on its requirement and continues through to and including contract award;

procuring entity means an entity covered under Annex 9.1;

qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

services means all services, including construction services, unless otherwise specified;

supplier means a person or group of persons that provides or could provide goods or services; and

technical specification means a tendering requirement that:

(i) lays down the characteristics of a good or a service to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or a service.

Article 9.4: Scope and Coverage

Application of this Chapter

1. This Chapter applies to any measure regarding covered procurement within Ontario or Québec.

2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:

(a) of a good, a service, or any combination thereof:

(i) as specified in Annex 9.1 to this Chapter; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in Annex 9.1 to this Chapter, at the time of publication of a notice in accordance with Article 9.8;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage in paragraph 4 or in Annex 9.2 to this Chapter.

3. Where a procuring entity, in the context of covered procurement, requires a person not covered under Annex 9.1 to this Chapter to procure in accordance with particular requirements, Article 9.6 shall apply *mutatis mutandis* to such requirements.

Non-Application of this Chapter

4. Except where provided otherwise, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid; or

(ii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(f) procurement between one government entity or government enterprise and another government entity or government enterprise;

(g) procurement in relation to an international crossing between a Party and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;

(h) procurement 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;

(i) procurement by a procuring entity on behalf of another entity where the procurement would not be covered by this Chapter if it were conducted by the other entity itself; or

(j) instruments of public debt, exchange rates, reserve management or other policies involving transactions in securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital. Accordingly, this Chapter does not apply to contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments.

5. Where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ("recurring contracts"), the calculation of the estimated maximum total value shall be based on:

   (a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

   (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of a good or a service, or procurement for which a total price is not specified, the basis for valuation shall be:

   (a) in the case of a fixed-term contract:

      (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

      (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

   (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

   (c) where it is not certain whether the contract is to be a fixed-term contract, Parties shall use subparagraph (b) for valuation.

Article 9.5: General Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on interprovincial trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

   (a) necessary to protect public morals, order or safety;

   (b) necessary to protect human, animal or plant life or health;

   (c) necessary to protect intellectual property;

   (d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour; or

(e) necessary for consumer protection.

For greater certainty, nothing in this Chapter shall prevent a Party, including its procuring entities, from taking any action or from not disclosing any information which it considers necessary to protect its essential security interests relating to the procurement of arms or ammunition[3], or to procurement indispensable for its security.

Article 9.6: General Principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and suppliers.

   Except as otherwise provided in this Chapter, measures that are inconsistent with paragraph 1 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, the place where the goods are produced or the services are provided, or other like criteria;

   (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 considered 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;

   (f) the use of price discounts or preferential margins in order to favour particular suppliers; and

   (g) 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.

[3] The expression "ammunition" in this Article is considered equivalent to the expression "munitions".

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

   (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the other Party's affiliation or ownership; or

   (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Buying Groups

3. Entities covered by this Chapter 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 Chapter. The Parties shall not direct the procurement activities of buying groups in a manner inconsistent with this Chapter.

Canadian Content

4. Provided that the measure is consistent with a Party's international trade obligations, that its purpose is not to avoid competition or to discriminate against the other Party's goods, services or suppliers, and that it is not applied in a discriminatory manner, nothing in this Chapter prevents a Party from:

   (a) according a preference for Canadian value-added; or

   (b) limiting its tendering to Canadian goods, services or suppliers.

Use of Electronic Means

5. When conducting covered procurement by electronic means, a procuring entity shall:

   (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

   (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

6. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Offsets

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Article 9.7: Publication of Measures regarding Procurement

1. Each Party shall:

(a) publish any measure of general application relating to covered procurements, and any changes or additions to this information;

(b) upon request, respond to any inquiry relating to this information.

Article 9.8: Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 9.14, a procuring entity shall publish a notice of intended procurement.

2. Procuring entities shall provide their notices of intended procurement, if accessible by electronic means, through links in a gateway electronic site that is accessible free of charge. Each Party shall provide the address of the electronic site to the Committee.

The notices may also be published in an appropriate paper medium that is widely disseminated and those notices shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice.

3. At such time as a suitable Canada-wide single point of access becomes available, all notices of intended procurement shall be directly accessible by electronic means free of charge through that point of access.

4. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language(s) in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) where, pursuant to Article 9.10, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary Notice

5. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

6. Procuring entities are encouraged to publish in the electronic and, where available, paper mediums referred to in paragraphs 2 and 3 as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

7. A procuring entity may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 4 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 9.9: Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that ensure that a supplier has the legal and financial capacity and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience where essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 9.10: Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimize differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article 9.8(4) (a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation;

(b) provide, by the commencement of the time-period for tendering, at least the information in Article 9.8(4) (c), (d), (e), (h) and (i) to the qualified suppliers that it invites to submit tenders; and

(c) allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

5. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 4 (c).

Multi-Use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that it publishes, annually or otherwise makes available continuously by electronic means, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify whether a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) an indication that the list may be used for procurement covered by this Chapter.

7. Notwithstanding paragraph 6, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 6 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

8. A procuring entity shall allow a supplier to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

9. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in accordance with Article 9.12, the procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

10. A procuring entity may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

    (a) the notice includes the information required and is published in accordance with paragraph 6, as much of the information required under Article 9.8(4) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

    (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 9.8(4), to the extent such information is available.

11. A procuring entity may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 8 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

12. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

13. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 9.11: Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

   (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

   (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment, provided that it does so in accordance with this Article.

Tender Documentation

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

   (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any

requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria that the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

    (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

    (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article 9.12: Time Periods

1. A procuring entity shall, consistent with its own reasonable needs and mandatory deadlines under applicable trade agreements, provide sufficient time for suppliers to prepare and submit requests for participation and bids, taking into account such factors as:

    (a) the nature and complexity of the procurement;

    (b) the extent of subcontracting anticipated; and

    (c) the time necessary for transmitting tenders where electronic means are not used.

These time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

Article 9.13: Negotiation

1. A Party may permit its procuring entities to conduct negotiations with suppliers where:

    (a) the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 9.8(4); or

    (b) it appears from the evaluation that no tender is clearly the most advantageous in satisfying the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

    (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 9.14: Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 9.8 through 9.10, paragraphs 7 through 11 of Article 9.11, and Articles 9.12, 9.13, 9.15 and 9.16 under any of the following circumstances:

   (a) where:

      (i) no tenders were submitted or no suppliers requested participation;

      (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

      (iii) no suppliers satisfied the conditions for participation; or

      (iv) the tenders submitted have been collusive,

   provided that the requirements of the tender documentation are not substantially modified;

   (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

      (i) the requirement is for a work of art;

      (ii) the protection of patents, copyrights or other exclusive rights; or

      (iii) due to an absence of competition for technical reasons;

   (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

      (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

      (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) only when strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 9.15: Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 9.16: Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

   (a) the most advantageous tender; or

   (b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

Article 9.17: Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 9.18, a procuring entity shall, on request, provide an unsuccessful supplier

with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

   (a) a description of the goods or services procured;

   (b) the name and address of the procuring entity;

   (c) the name and address of the successful supplier;

   (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

   (e) the date of award; and

   (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 9.14, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

   (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 9.14; and

   (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

4. Each Party shall report annually to the other Party on procurement by its covered entities, except for procurement that is already reported in another agreement applying to both Parties. The report shall contain the number and aggregate values of the procurements awarded that equal or exceed the applicable threshold values specified in Annex 9.1. The aggregate values shall be broken down by each category of procurement, being goods, services and construction. Statistics shall be collected on the basis of the fiscal year.

5. Where a Party publishes its statistics on an official website in a manner that is consistent with the requirements of paragraph 4, the Party may provide a link to the website instead of reporting to the other Party.

Article 9.18: Disclosure of Information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

   (a) would impede law enforcement;

   (b) might prejudice fair competition between suppliers;

   (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

   (d) would otherwise be contrary to the public interest.

Article 9.19: Bid Protest Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

   (a) a breach of the Chapter; or

   (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a complaint, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a complaint by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the complaint.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

   (a) the procuring entity shall respond in writing to the complaint and disclose all relevant documents to the review body;

   (b) the participants to the proceedings ("participants") shall have the right to be heard prior to a decision of the review body being made on the complaint;

   (c) the participants shall have the right to be represented and accompanied;

   (d) the participants shall have access to all proceedings;

   (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

   (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

   (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

   (b) corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the complaint, or both, where a review body determines that there has been a breach or a failure as referred to in paragraph 1.

Article 9.20: Modifications and Rectifications to Coverage

Notification of Proposed Modification

1. A Party shall notify the other Party of any proposed rectification, withdrawal of an entity or other modification of its coverage (any of which is hereinafter referred to as "modification"). The Party proposing the modification ("modifying Party") shall include in the notification:

   (a) for any proposed withdrawal of an entity from its coverage on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or

   (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Chapter.

Objection to Notification

2. The Party whose rights under this Chapter may be affected by a proposed modification notified under paragraph 1 may notify the modifying Party of any objection to the proposed modification. Such objections shall be made within 30 days from the date of the circulation of the modification notification, and shall set out reasons for the objection.

Consultations

3. If there is an objection to notification, the Parties shall make every attempt to resolve the objection through consultations, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter.

Implementation of Modifications

4. A proposed modification shall become effective only where:

(a) the other Party does not submit to the Committee a written objection to the proposed modification within 30 days from the date of circulation of the notification of the proposed modification under paragraph 1;

(b) the objecting Party has notified the modifying Party that it withdraws its objections to the proposed modification; or

(c) 90 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the objecting Party in writing of its intention to implement the modification.

Withdrawal of Substantially Equivalent Coverage

5. Where a modification becomes effective pursuant to paragraph 4(c), the objecting Party may withdraw substantially equivalent coverage. The objecting Party shall inform the modifying Party in writing of any such withdrawal at least 30 days before the withdrawal becomes effective.

Dispute Resolution

6. Any dispute arising from a proposed modification shall be subject to Chapter 12 (Dispute Resolution).

Article 9.21: Ministers Responsible

1. The Parties designate the following Ministers as responsible for this Chapter:

   (a) for Ontario, the President of the Treasury Board; and

   (b) for Québec, the Chair of the *Conseil du trésor*.

2. Ministers shall:

   (a) provide overall management and oversight of this Chapter;

   (b) consult with respect to improvements to this Chapter; and

   (c) receive reports, as required, from the Committee on Government Procurement.

3. Ministers may make modifications to the Chapter subject to the endorsement of the Ministerial Council.

Article 9.22: Institutions

Committee on Government Procurement

1. The Committee shall be composed of officials from each Party and shall meet, as necessary, for the purpose of providing the Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out other responsibilities as may be assigned to it by the Parties.

2. The Committee shall meet, upon request of a Party, to:

   (a) consider issues regarding public procurement that are referred to it by a Party;

   (b) discuss any other matters related to the operation and implementation of this Chapter;

   (c) provide recommendations to Ministers responsible for the Chapter to improve this Chapter where necessary, including modifications to the text of this Chapter; and

   (d) determine and publish the inflation-adjusted thresholds.

Article 9.23: Relationship with Other Agreements

If, after the entry into force of this Chapter, a Party accords to a non-Party greater access through another agreement to its government procurement market than the access that it has accorded to the other Party, that Party may, at the request of the other Party, enter into negotiations regarding the extension of the same access to the other Party on a reciprocal basis.

Annex 9.1
Applicable Thresholds

1. Unless otherwise specified in Annex 9.2, the following thresholds shall apply to procurement of goods, services and construction services by entities covered by this Chapter:

	Ministries and agencies[1]	**School boards, academic, health and social service entities, and municipalities**[2]	**Entities of a commercial or industrial nature and energy entities**[3]
Goods	$25,000	$100,000	$500,000
Services	$100,000	$100,000	$500,000
Construction Services	$100,000	$100,000	$5,000,000

Inflation adjustment[4]

2. Thresholds in Annex 9.1 shall be adjusted in accordance with the following:

   a) the inflation rate shall be measured by the Consumer Price Index (CPI) published by Statistics Canada;

   b) the first adjustment for inflation, to take effect on January 1, 2018, shall be calculated using the two-year period from November 1, 2015 through October 31, 2017; and

   c) all subsequent adjustments shall be calculated using two-year periods, each period beginning November 1, and shall take effect on January 1 of the year immediately following the end of the two-year period.

---

1 For Québec, 'Agencies' means the bodies set out in subparagraphs (2) through (4) of the first paragraph of section 4 of the *Act Respecting Contracting by Public Bodies* (R.S.Q., c.C-65.1), and the persons set out in the second paragraph of that section, with the exception of the bodies and persons mentioned in section 5 of the Act.

2 For Québec, "School boards, academic, health and social service entities and municipalities" means the municipalities, the municipal organizations, and the bodies set out in subparagraphs (5) and (6) of the first paragraph of section 4 of the *Act Respecting Contracting by Public Bodies*, including the legal persons or other entities owned or controlled by one or several of these organizations.

For Ontario, "School boards, academic, health and social service entities and municipalities" means municipalities, school boards and publicly-funded academic, health and social service entities.

3 For Québec, "Entities of a commercial or industrial nature and energy entities" means a body set out in section 7 of the *Act Respecting Contracting by Public Bodies.*

4 The adjustment shall be calculated according to the following formula:

$T_c \times (1 + p_i) = T_n$, where

T_c = Current level of threshold; p_i = accumulated inflation rate for the i^{th} two-year period; and

T_n = New level of threshold, after adjustment.

Annex 9.2

Excluded Entities

The following entities are not covered by this Chapter:

Ontario:

- Infrastructure Ontario
- Electrical Safety Authority
- Ontario Independent Electricity System Operator
- Ontario Electricity Financial Corporation
- Offices of the Legislative Assembly

Québec:

- National Assembly of Québec and its Officers

Party Specific Exceptions

Ontario

1. Ontario Power Generation reserves the right to accord a preference to bids that provide benefits to the province, such as favouring local sub-contracting, in the context of procurements relating to the construction or maintenance of nuclear facilities or related services. A selection criterion of benefits to the province in the evaluation of tenders shall not exceed 20 percent of total points.

2. For greater certainty, this Chapter does not cover procurement for the production, transmission and distribution of renewable energy, other than hydro-electricity, by the province of Ontario as set out in the *Green Energy Act*.

Québec

1. This Chapter does not cover procurement:

   (a) of the following goods by Hydro-Québec (identified in accordance with the Harmonized System Codes (HS)): HS 7308.20; HS 8406; HS 8410; HS 8426; HS 8504; HS 8535; HS 8536; HS 8537; HS 8544; HS 8705.10; HS 8705.20; HS 8705.90; HS 8707; HS 8708; HS 8716.39; HS 8716.40.

   (b) of the following services by Hydro-Québec (identified in accordance with the United Nations Provisional Central Products Classification (CPC)):
   7523 – Data and message transmission services
   84 – Computer and related services
   86724– Engineering design services for the construction of civil engineering works
   86729– Other engineering services.

(c) from a non-profit organization with respect to urban planning, as well as the resulting plans and specifications preparation and works management, provided that the non-profit organization respects, for its procurement, the procuring entity's obligations under this Chapter.

(d) in respect of shipbuilding and repair, including related architectural and engineering services.

(e) of goods purchased for representational or promotional purposes, or of services or construction services purchased for representational or promotional purposes outside the province.

2. The Province of Québec reserves the right to adopt or maintain any measure favouring local outsourcing in the case of construction services contracts awarded by Hydro-Québec. For greater certainty, such measure would in no case be a condition for the participation or qualification of suppliers.

General Notes

1. This Chapter does not cover procurement:

(a) of food made, produced or harvested in Ontario or Québec for which the value is below $50,000;

(b) of transportation services that form a part of, or are incidental to, a procurement contract;

(c) of services contracts, excluding construction services contracts, which grant to a supplier the right to provide and exploit a service to the public as complete or partial consideration for the delivery of a service under a procurement contract;

(d) targeting poverty reduction for disadvantaged people for which the value is below $300,000;

(e) contracts with a non-profit organization;

(f) of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this Chapter;

(g) of any goods the interprovincial movement of which is restricted by laws not inconsistent with this Agreement;

(h) of goods and services related to computer software for educational purposes;

(i) of goods or consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to public interest;

(j) of the following services:

(i) health services and social services;

(ii) 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, land surveyors, accountants, lawyers and notaries;

(iii) transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;

(iv) financial services, as well as services complementary or auxiliary to financial services;

(v) integrated engineering services for transportation infrastructure turnkey projects.

2. Any exclusion that is related either specifically or generally to Ontario or Québec entities or enterprises covered by this Chapter will also apply to any successor entity or entities, enterprise or enterprises, in such a manner as to maintain the value of the Parties' coverage.

3. Provided that it is in accordance with a Party's international trade obligations, when purchasing mass transit vehicles, a Party may, pursuant to the terms of this Chapter, require that the successful bidder contract up to 25 percent of the contract value in Canada. Québec may also require that final assembly takes place in Canada.

Chapter Ten

Agriculture and Food Goods

Article 10.1: Objectives

1. This Chapter is to facilitate bilateral trade in agriculture and food goods and strengthen economic ties between Ontario and Québec in order to improve the competitive position of their respective provincial agriculture and food processing sectors.

2. The Parties recognize the benefit of enhanced bilateral collaboration and cooperation aimed at developing and promoting common positions on priority issues relating to agriculture and agri-food policy.

3. The Parties share a commitment to preserve and enhance supply management and orderly marketing as priority policy instruments within the Ontario-Québec economic region.

4. The Parties share a common interest in advocating in support of supply management and orderly marketing at the national level and supply management at the international level.

5. The Parties recognize the mutual benefit in considering regional solutions and responses to challenges facing their respective agriculture and food processing sectors.

6. The Parties acknowledge the importance of working together towards food production and processing sectors that are innovative, competitive, sustainable and responsive to consumer interests concerning food good quality, safety, diversity, integrity and authenticity relating to origin, composition and production processes.

7. The Parties are committed to fostering greater collaboration between the representatives of their provincial agriculture and food processing sectors.

Article 10.2: Scope and Coverage

1. Subject to this chapter, this Agreement applies to all measures adopted or maintained by a Party relating to agriculture and food goods.

2. 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.

3. Chapter 12 (Dispute Resolution) applies only to technical measures affecting inter-provincial trade in agriculture and food goods adopted by a Party after this Agreement enters into force.

4. For greater certainty, Chapter 12 does not apply to, nor shall any provision in this Agreement in any manner be used to challenge or invalidate, any measure adopted or maintained after this Agreement comes into force pursuant to:

(a) the Ontario *Farm Products Marketing Act* (R.S.O., c. F.9) or the *Commodity Boards and Marketing Agencies Act* (R.S.O., c. C.19); or

(b) the Québec *Act Respecting the Marketing of Agricultural, Food and Fish Products* (R.S.Q., c. M-35.1);

including any subsequent versions or replacements of the Acts specified in paragraphs (a) and (b).

5. No Party shall amend or renew a technical measure in existence prior to this Agreement coming into force, in a manner that would decrease the conformity of that measure with this Agreement.

6. In keeping with the rights and obligations identified in paragraph 4 of Article 3.5 (Transparency), the Parties confirm the right to omit regulatory transparency requirements in paragraphs 2 and 3 of Article 3.5 in instances where a Party considers it necessary to address an urgent problem.

7. Further to the legitimate objectives identified in paragraph 2 of Article 5.7 (Legitimate Objectives), any measure aimed at:

(a) providing consumer information pertaining to the nature, origin, composition or production process of an agriculture or food good or any other essential product characteristic; or

(b) protecting consumers against deception, fraud and unsubstantiated product claims; or

(c) ensuring the integrity or authenticity of an agriculture or food product;

is deemed a legitimate objective that can be implemented, in particular, by adopting or maintaining measures relating to product name, composition or labeling of an agriculture or food good.

Article 10.3: Commitment to Enhanced Collaboration

1. The Parties commit to enhanced bilateral collaboration aimed at promoting and developing common positions on priority issues of agriculture and agri-food policy.

2. The Parties commit to seek regional solutions and responses to agriculture and food processing sector challenges.

3. The Parties recognize that efforts towards greater economic integration will be ongoing. Potential initiatives warranting further collaboration are set out in Annex 10.3.

Article 10.4: Ministerial Forum

1. In order to realize the objectives set out in Article 10.3, the Parties agree to establish a Ministerial Forum co-chaired by the Minister responsible for agriculture and food of each Party.

2. The Ministerial Forum:

   (a) shall convene annually in regular session and be hosted successively by each Party;

   (b) may convene in special session at any time at the agreement of both Parties; and

   (c) shall hold an inaugural session within six (6) months after the Agreement comes into force.

3. Each Party shall establish an Agriculture and Food Secretariat, comprised of a representative from each Party, to oversee the planning, preparation and administration of the ongoing work of the Ministerial Forum.

4. The Agriculture and Food Secretariat shall annually develop recommendations for consideration by the Ministerial Forum concerning items for inclusion on an action plan. The process for identifying potential action plan items will provide stakeholder groups with an opportunity for input as each Party deems appropriate.

5. The Ministerial Forum shall consider the recommendations of the Agriculture and Food Secretariat and establish an annual action plan aimed at achieving the objectives articulated in Article 10.3.

6. The Ministerial Forum shall establish bilateral *ad hoc* working groups as required, to be overseen by the Agriculture and Food Secretariat, to facilitate progress on the items identified on the action plan. The *ad hoc* working groups shall include agriculture producer and food processing sector representatives from each jurisdiction as the issue under consideration warrants.

7. In implementing this Chapter and carrying out the action plan of the Ministerial Forum, both Parties agree to work with their respective agriculture producer and food processing sector representatives as each Party deems appropriate.

Article 10.5: Dispute Resolution

Any dispute involving technical measures affecting interprovincial trade in agriculture and food goods shall first be submitted to the Ministerial Forum for consideration and resolution and engage the collaborative process identified in Article 10.4, before resorting to Chapter 12.

Article 10.6: Definitions

Agriculture and Food Secretariat means the Agriculture and Food Secretariat established pursuant to Article 10.4;

Agriculture 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;

Food good means any 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 whatsoever, 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;

Ministerial Forum means the Ministerial Forum established pursuant to Article 10.4;

Party means, for the purposes of this Chapter, the signatory government and relevant ministry or department, and does not extend to a governmental body or a non-governmental body such as a provincial marketing board that exercises authority delegated by law;

Provincial marketing board means a producer board or agency authorized under the law of the province to exercise powers of regulation in relation to the marketing of any agriculture or food good 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 food goods 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;

Technical measure means a technical regulation, standard, sanitary or phytosanitary measure or conformity assessment procedure. For greater certainty, technical measures do not include, *inter alia*, measures relating to supply management and orderly marketing, such as:

(a) measures that govern supply such as the fixing and allocation of production quotas;

(b) measures that govern price setting and related price fixing methods;

(c) measures that govern single-desk selling such as production, marketing, joint offer for sale and transportation conditions;

(d) terms and conditions of payment of the sales price; and

(e) measures that govern the supply of raw product to processors such as sale requirements between a producer and a board of producers or a purchaser, or between such a board and a purchaser.

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.

Annex 10.3

Potential Initiatives for Further Collaboration

1. The Parties have identified the following initiatives for consideration and further collaboration:

   (a) harmonization of animal traceability requirements;

   (b) regional strategies to address common challenges facing livestock and food processing sectors;

   (c) strategies to promote regional food basket approaches to support consumption of local foods;

   (d) harmonization of compositional standards for yogurt;

   (e) establishment of a common dairy processor quota allocation structure;

   (f) harmonization of certain regulatory and administrative standards relating to dairy goods packaging, the determination of milk fat content, and labeling of UHT and sterilized milk; and

   (g) development of common positions and strategies for addressing issues falling under federal purview, and attracting federal investment in areas of common interest.

2. Pursuant to Article 10.4, collaborative initiatives identified for inclusion on the action plan for any particular year shall be confirmed annually by the co-chairs of the Ministerial Forum.

Chapter Eleven

Environment and Sustainable Development

Article 11.1: Scope and Coverage

This Chapter applies to environmental measures adopted or maintained that may affect the mobility of persons or trade in goods, services or investments between the Parties.

Article 11.2: Relationship to Other Agreements

Nothing in this Agreement shall be construed to affect the rights and obligations of the Parties under environmental agreements, including the *Agreement Concerning Transboundary Environmental Impacts between the Government of Ontario and the Gouvernement du Québec* and the *Memorandum of Understanding between the Government of Ontario and Government of Québec concerning a Provincial-Territorial Cap and Trade Initiative*, in effect on the date of entry into force of this Agreement.

Article 11.3: Basic Rights and Obligations

1. Both Parties recognize that environmental protection and conservation are an integral part of their economies for this generation and future generations. The Parties will continue to strengthen environmental protection through their environmental laws and policies.

2. The Parties agree that they have the right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of the other Party. Each Party has the right to determine its level of environmental protection and to adopt or maintain differing levels of environmental protection based on the need to protect and enhance the environment.

3. No Party shall encourage trade or investment by weakening levels of protection already afforded in its environmental laws, in particular, as an encouragement for the establishment, acquisition, expansion, ongoing business activities or retention in its territory of an enterprise.

4. Environmental measures shall not be more trade restrictive than necessary to achieve a legitimate objective. The Party adopting or maintaining the measure shall take account of the need to minimize negative effects on trade, investment, or labour mobility when choosing among equally effective and reasonably available means of achieving that legitimate objective.

5. 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 11.4: Transparency

The Parties affirm their commitment to exchange information and share expertise pursuant to the joint working group established under the *Agreement Concerning Transboundary Environmental Impacts between the Government of Ontario and the Gouvernement du Québec.*

Article 11.5: Reconciliation

1. The Parties agree to pursue discussions to identify environmental measures that may directly affect interprovincial mobility, trade and investment and work to reconcile those measures.

2. The Parties shall annually examine existing and new environmental measures through the working group set up under the *Agreement Concerning Transboundary Environmental Impacts between the Government of Ontario and the Gouvernement du Québec.* This working group shall make recommendations regarding additional measures to be reconciled to ministers responsible for environment in Ontario and Québec.

3. The Parties agree to reconcile the environmental measures set out in Annex 11.5.

4. The Parties shall not, through reconciliation, weaken levels of environmental protection.

Annex 11.5

Measures for Reconciliation

The Parties agree to reconcile the following environmental measures:

1. Regulations pertaining to heavy duty vehicle emissions standards

The Parties recognize that particulate matter is a constituent of smog and an identified health risk and that both Parties have inspection and maintenance programs for heavy duty diesel trucks and buses that strive to ensure in-use emissions standards are met to reduce particulate matter emissions and improve air quality.

The Parties agree to work towards harmonizing the in-use emissions standards for heavy duty trucks and buses to meet Ontario's stricter standards, reduce particulate matter emissions and improve air quality.

To harmonize the in-use emissions standards, Québec agrees to work towards tightening standards to meet Ontario's 40% opacity standard for 1990 and older model vehicles, 30% opacity standard for 1991 and newer model vehicles, and 30% opacity standard for school buses.

2. Environmental Assessment for Ontario-Québec projects which have a significant transboundary impact

The Parties confirm their commitment to conduct a coordinated approach to the environmental assessments of projects under the Ontario *Environmental Assessment Act* and under the Québec *Environmental Quality Act*.

2.1 Transparency between the Parties

When a potential project is likely to have significant transboundary environmental impacts to either of the provinces, the Parties agree to:

(a) notify each other as early as possible;

(b) confirm in writing to each other if an environmental assessment responsibility or an interest exists; and

(c) provide timely disclosure and access to relevant information about the proposed project where available.

2.2 Transparency with respect to Proponents

In the event that both provincial environmental assessment requirements are triggered for an undertaking, the Parties agree to inform the proponent and coordinate to the extent possible, with respect to:

(a) establishing a work plan for the assessment, including coordinating information, consultation, and documentation requirements while ensuring that each respective Party's statutory requirements are fulfilled;

(b) determining conditions and monitoring requirements, if applicable; and

(c) coordinating timing of decision-making and announcements.

3. Extended Producer Responsibility (EPR)

The Parties share the common vision of moving towards a zero waste society by promoting the goals of reducing the amount of waste generated, increasing the reusability of products and packaging, and diverting recoverable wastes away from final disposal toward higher end recycling uses.

The Parties agree to work together to achieve those goals by a shared focus on the development and implementation of policies and programs related to an EPR approach. EPR is a policy approach which shifts responsibility to producers for the end of life management of their products and packaging as well as encourages them to reduce their environmental impact

Collaboration on approaches to EPR will seek to minimize differences between the Parties and provide businesses with greater clarity.

3.1 Diversion programs

The Parties agree to explore ways to establish and harmonize diversion programs in the following areas:

(a) Moving their programs for packaging and printed paper (e.g. blue box) towards increased producer responsibility;

(b) Ontario will seek to establish diversion programs to complement existing programs in Québec;

(c) Québec will seek to establish diversion programs to complement existing programs in Ontario including batteries, mercury lamps and other municipal hazardous or special waste, including electronic products such as televisions, computers, printers, phones, cameras and audio-visual equipment; and

(d) Ontario and Québec will work together to identify and establish new programs in other sectors.

3.2 Diversion program Implementation

The Parties agree to work towards reconciling their approach to waste diversion programs in accordance with the following principles:

(a) Apply a waste diversion hierarchy that focuses on reduction followed by reuse and finally recycling. Energy-from-waste should only be considered when the preferred options are not technically or economically viable;

(b) Seek to reduce the environmental impact of a product to the greatest extent possible;

(c) Move towards full EPR to the greatest extent possible;

(d) Producers should internalize environmental costs into the product price;

(e) Foster design for environment among producers;

(f) Endeavour to maximize environmental benefits while minimizing marketplace impacts;

(g) Work to implement programs that establish performance targets;

(h) Work to implement programs that incorporate end of life tracking and auditing requirements; and

(i) Work to implement programs that establish standards for those involved in managing the products and packaging.

PART V

DISPUTE RESOLUTION

Chapter Twelve

Dispute Resolution

Article 12.1: 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, including the assistance of the Ministers responsible for this Agreement, to arrive at a mutually satisfactory resolution of any matter that may affect the operation of this Agreement.

Article 12.2: Application[4]

1. Subject to paragraphs 2 and 3, this Chapter applies to the avoidance and resolution of disputes between Parties, regarding the interpretation or application of this Agreement.

2. This Chapter applies to Chapter 7 (Financial Services), subject to Article 7.8 (Exceptions), and as modified by Articles 7.11 (Dispute Resolution) and 7.12 (Financial Services Experts Roster).

3. This Chapter does not apply to complaints made under Article 9.19 (Bid protest procedures). For greater certainty, a Party may not initiate a dispute under this Chapter on behalf of a supplier with respect to a complaint under Article 9.19 (Bid protest procedures).

4. This Chapter applies to Chapter 10 (Agriculture and Food Goods), subject to paragraphs 3 and 4 of Article 10.2 (Scope and Coverage), and to Article 10.5 (Dispute Settlement).

5. Where a Party believes that a measure may be inconsistent with both the *Agreement on Internal Trade* and this Agreement, it may choose one dispute resolution process and, once chosen, shall have no recourse to the other process regarding the same measure.

Article 12.3: Consultations

1. A Party that considers that a measure of the other Party is or would be inconsistent with that Party's obligations under this Agreement may request consultations with that Party by delivering written notice to that other Party and to the Secretariat. The notice shall specify the actual or proposed measure complained of, the relevant provisions of this Agreement and a brief summary of the complaint.

---

4 As modified by the September 2015 Second Protocol of Amendment

2. Consultations shall be confidential and without prejudice to the rights of the Consulting Parties in any Proceedings.

3. The Disputing 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 12.4: Request for Panel

1. Where the matter in question has not been resolved to the satisfaction of the Initiating Party, that Party may make a written request to the Secretariat to establish a Panel. No request to establish a Panel may be made sooner than one hundred twenty (120) days after the Initiating Party delivered a request for consultations to the Replying Party pursuant to Article 12.3(1).

2. 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 trade between the Parties; and

   (e) identify the actual or potential injury or denial of benefit caused by the actual or proposed measure.

3. The Panel shall be established in accordance with Article 12.5 and shall be composed of three members unless the Disputing Parties agree to a Panel composed of one member.

Article 12.5: 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. For the purpose of these dispute resolution procedures, Disputing Parties shall use the Panel, Compliance Panel and Appellate Panel Rosters maintained by the Parties to the *Agreement on Internal Trade* pursuant to its Annex 1704(2) (Panel, Compliance Panel and Appellate Panel Rosters).[5]

5 Pending the addition of Annex 1704(2) to the *Agreement on Internal Trade* through the 10th Protocol of Amendment, Disputing Parties shall use the Roster established pursuant to Annex 1704.1 of the same Agreement.

3. Within thirty (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 bilingual (French and English) Panelist that was nominated to the roster by the other Party. If the Parties have agreed to a Presiding Body composed of one member, they shall agree, within the thirty (30) days, on a bilingual Panelist from the roster with administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2) of the *Agreement on Internal Trade*.

4. If a Disputing Party fails to appoint a Panelist within thirty (30) days, or, if the Parties have agreed to a Presiding Body composed of one member and the Parties fail to agree on a Panelist within thirty (30) days, the Secretariat shall select the bilingual Panelist by lot, from the roster.

5. The appointed Panelists shall, within ten (10) days after the last of them has been appointed, select a bilingual chairperson of the Presiding Body from the roster. If they are unable to agree within that period, the Secretariat shall select the bilingual chairperson by lot from the roster.

6. If neither of the Panelists appointed or selected pursuant to this Article has administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2) of the *Agreement on Internal Trade*, the Panelists or the Secretariat, as the case may be, shall select a person with administrative law experience to be the chairperson.

7. Unless the Disputing Parties otherwise agree, the Panelists 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 the Province of a Disputing Party.

8. If a bilingual Panelist with appropriate experience cannot be found within the rosters maintained under Annex 1704 (2) of the *Agreement on Internal Trade*, a Disputing Party, the Panelists or the Secretariat, as the case may be, may appoint a bilingual candidate with the appropriate qualifications from the public at large.

9. 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 12.6: Presiding Body Rules of Procedure

1. The Panel, Compliance Panel and Appellate Panel Rules of Procedure set out in Annex 12.6 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 Disputing Parties so agree and subject to the following and to such other terms and conditions as the Disputing Parties may agree.

(a) If a procedural question arises, the Presiding Body shall first seek advice from the Disputing 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 Disputing 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 Disputing Parties.

3. All proceedings before a Presiding Body shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.

Article 12.7: 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 mentioned in Rule 43 of Annex 12.6, it does not lose jurisdiction and shall inform the Disputing 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, under (b), the measure has been found inconsistent, a determination, with reasons, as to whether the measure has impaired or would impair 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 Rule 62 of Annex 12.6.

4. The Panel retains jurisdiction for the purpose of the assessment of a cost order subsequent to the issuance of 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 Party to the Secretariat.

5. Within ten (10) days after the receipt of the Report, a Disputing Party may, with notice to the chairperson of the Panel, the Secretariat and to the other Disputing Party, request that the Panel:

   (a) clarify one or more aspects of its Report, in which case the Panel shall, within fifteen (15) days of receipt of the notice, provide the clarification; and

   (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 fifteen (15) days of receipt of the notice, make such corrections as it considers appropriate.

Article 12.8: 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.

2. Where a Disputing Party provides a notice of appeal as provided in Rule 46 of Annex 12.6, an Appellate Panel shall be established in accordance with Article 12.5 and, notwithstanding Article 12.5(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 that:

   (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 62 of Annex 12.6.

5. If the Appellate Panel cannot release its final report within the period stipulated in Rule 52 of Annex 12.6, 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 purpose of the assessment of a cost order subsequent to the issuance of its report, and may, at the request of a Disputing Party or on its own initiative, order Operational Costs to be paid and specify 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 Article 12.11 or matters

under Article 12.16, together with those parts of the 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 ten (10) days after receipt of the Appellate Report, either Party may, with notice to the Secretariat, request that the Appellate Panel:

   (a) clarify one or more aspects of its Report, in which case the Appellate Panel shall, within fifteen (15) days of receipt of the notice, provide the clarification; and

   (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 fifteen (15) days of receipt of the notice, make such corrections as it considers appropriate.

Article 12.9: Mutually Satisfactory Resolution

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 Secretariat. Upon receipt of such notification by the Secretariat, the Proceeding shall be terminated.

4. Proceedings may be suspended at the request of the Disputing Parties in order to negotiate a mutually satisfactory resolution.

5. Where a Proceeding has been suspended pursuant to Article 12.9(4), if no Disputing Party has made an application to end the suspension within thirty-six (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.

Article 12.10: Confirmation of Compliance

1. 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 it 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 and to the Secretariat.

2. A Complaining Party may, within thirty (30) days of delivery to it of the notice pursuant to paragraph 1, 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 and to the Secretariat.

3. Where no objection has been delivered pursuant to paragraph 2, a Party that provides notice pursuant to paragraph 1 is deemed to have complied with the Agreement in respect of the matters addressed in the Report.

Article 12.11: Request for Compliance Panel

1. Upon the expiry of one (1) 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.

2. Notwithstanding paragraph 1, a Complaint Recipient may request a Compliance Panel immediately upon receipt of an objection made pursuant to Article 12.10(2).

3. 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 12.12(1) and (2);

   (c) at the discretion of the Compliance Panel, an order apportioning Operational Costs, as provided for in Rule 62 of Annex 12.6.

4. 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 Disputing Party to the Secretariat.

5. Within ten (10) days after receipt of the Compliance Report, a Disputing Party, with notice to the chairperson of the Compliance Panel, the Secretariat and the other Disputing Party, may request that the Compliance Panel:

   (a) clarify one or more aspects of its Compliance Report, in which case the Compliance Panel shall, within fifteen (15) days of receipt of the notice, provide the clarification; and

   (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 fifteen (15) days of receipt of the notice, make such corrections as it considers appropriate.

6. If the Compliance Panel cannot release its final report within the period mentioned in Rule 57 of Annex 12.6, 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 report.

Article 12.12: 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 Party's obligations under the Agreement;

   (b) the commercial prejudice caused by the inconsistency on the market or markets;

   (c) whether the Party has made efforts, in good faith, to comply with the Report; and

   (d) any other factor the Compliance Panel considers relevant.

2. The amount of a monetary penalty in a dispute proceeding shall not exceed ten million dollars.

Article 12.13: Limiting Judicial Review/Privative Clause

1. Unless appealed pursuant to Article 12.8, 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 12.14: Failure to Participate/Discontinuance

The failure of a 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 12.15: Publication - Ministerial Council's Agenda

1. The Secretariat shall make the report of a Presiding Body public thirty (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 Ministerial Council's agenda for its next annual meeting. However, such a request may not be made sooner than thirty (30) days after the

date on which the report was issued. The dispute shall remain on the agenda for every annual Ministerial Council meeting thereafter until the matter is resolved.

3. Where a dispute has been added to the Ministerial Council's agenda pursuant to paragraph 2, the Complaint Recipient shall, at least ten (10) days before each annual Ministerial Council meeting whose agenda includes the dispute, provide the Ministerial Council, through the Secretariat, 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 12.16: Non-Implementation – Retaliatory Action

1. If, in its Report, a Panel has determined that an actual measure is inconsistent with this Agreement and the dispute 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 then give written notice to the Ministerial Council, through the Secretariat, of its intention to take retaliatory action against the Complaint Recipient.

2. Subject to having notified the Ministerial Council of its intention in accordance with paragraph 1, the complaining Party may, within thirty (30) days after the date of delivery of the notification, 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.

3. 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.

4. On the written request of a Disputing Party delivered to the other Party and the Secretariat, the Secretariat shall convene a Panel, composed of the original Panelists, where possible, within thirty (30) days after the date of delivery of the request, to determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party under paragraph 2 is manifestly excessive.

5. The Parties recognize that any suspension of benefits or imposition of retaliatory measures under paragraph 2 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.

6. No separate Panel shall be established under paragraph 4 where a Compliance Panel is established under Article 12.11(1).

7. A Compliance Panel established under Article 12.11(1) shall have the jurisdiction of a Panel established under paragraph 4.

Article 12.17: Code of Conduct

Presiding body members of the Panel, Compliance Panel and Appellate Panel shall conduct themselves in accordance with Annex 1719 (Code of Conduct for Panelists) of the *Agreement on Internal Trade***,** which shall be read and interpreted as if it where part of this Agreement.

Article 12.18: Limit on Jurisdiction

For greater certainty, a Presiding Body has no jurisdiction to rule on any constitutional issue.

Article 12.19: Contact Points

1. Where this Chapter requires notice to be sent to a Party, the point of contact for notice shall be that person identified to the Secretariat by the Party as being responsible for the relevant Chapter of Part IV of this Agreement. Where no such person is identified, the point of contact shall be that Party's Minister responsible for the implementation of this Agreement.

2. Where this Chapter requires a notice, request, report or other document to be sent to the Ministerial Council or a Presiding Body, it shall be sent to the chairperson of the Council or Presiding Body, as the case may be.

Article 12.20: Definitions

In this Chapter:

Appellant means the Disputing Party appealing a Panel decision pursuant to Article 12.8;

Appellate Panel means a Panel established pursuant to Article 12.8(2);

Appellate Report means a report issued by an Appellate Panel pursuant to Article 12.8(4);

Compliance Panel means a Panel convened pursuant to a request made in accordance with Article 12.11(1);

Compliance Report means a report issued by a Compliance Panel pursuant to Article 12.11(3);

Complaining Party means the Party that has requested a Panel pursuant to Article 12.4(1);

Complaint Recipient means the Party complained against by a Complaining Party pursuant to Article 12.4(1);

Consulting Parties means the Initiating Party and Replying Party;

Disputing Parties means the Complaining Party and the Complaint Recipient;

Initiating Party means a Party that has requested consultations pursuant to Article 12.3(1);

Ministerial Council means the council established pursuant to Article 2.2 of this Agreement;

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 12.6(2) and costs of third Party facilities and equipment used for meetings or hearings involving the Presiding Body;

Panel unless otherwise specified means the Panel established pursuant to Article 12.4(1);

Panelist means a person appointed to a Panel;

Presiding Body means, as the case may be, a Panel, Compliance Panel or Appellate Panel;

Proceeding means a Proceeding before a Panel, Compliance Panel or Appellate Panel, as the case may be;

Report means the report of a Panel issued pursuant to Article 12.7 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 12.3(1);

Respondent means the Disputing Party against which an appeal of a Panel decision is taken pursuant to Article 12.8.

Annex 12.6

Panel, Compliance Panel and Appellate Panel Rules of Procedure

These Rules are intended to give effect to the provisions of Chapter Twelve 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 12.6 and shall apply to dispute resolution proceedings under Chapter 12.

General Rules

2. Subject to these Rules, the Presiding Body is to conduct Proceedings in such manner as it considers appropriate, provided that the Proceedings are transparent, 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. These Rules shall be liberally construed to secure the fairest, most transparent, least expensive and most expeditious determination of every Proceeding.

Directions on Procedure

4. 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.

5. 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.

Extending or Abridging Time Limits

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

7. No proceeding is invalid by reason of a defect in form or a technical irregularity.

Responsibilities of the Secretariat

8. The Secretariat shall provide administrative support for all Proceedings, including making arrangements necessary for all oral hearings and meetings of the Presiding Body.

9. 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.

10. The Secretariat shall forward copies of any request for a Panel Review pursuant to Article 12.4(1), request for a Compliance Panel Review pursuant to Article 12.11(1), and Notice of Appeal pursuant to Article 12.8(2), to the other Party and shall forward copies of all other documents and submissions filed with the Secretariat in a Proceeding to the other Disputing Party.

11. The Secretariat shall advise the Disputing Parties in a timely manner of the time and location of all hearings and meetings before the Presiding Body in a proceeding.

12. The Secretariat shall enter into the record all reports, decisions, orders and directions made by the Presiding Body and shall forward to Parties 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, the Secretariat shall forward a certified copy of the order to each Party affected by the order.

Translation and Interpretation

13. Written documents and submissions filed by a Disputing Party in connection with or during a Proceeding, and oral hearings, may be in either official language.

14. 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 Disputing Party or a member of the Presiding Body so requests. Disputing Parties are encouraged to provide documents and submissions in both official languages whenever feasible.

15. 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

16. The chairperson of the Presiding Body of a Proceeding shall take the chair at all its meetings.

17. 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.

18. Except to the extent that a Presiding Body otherwise directs, hearings shall be public.

19. The majority and dissenting opinions of Presiding Body members shall be anonymous.

20. Presiding Body meetings other than hearings may be conducted by telephone conference call or other electronic means.

21. A Presiding Body may adopt its own internal procedures for routine administrative matters.

Confidentiality

22. Where a Disputing Party indicates that any information contained in documents filed with the Secretariat 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 the other Disputing Party 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.

23. A Disputing Party 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.

24. 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.

25. On request of a Party, the other Disputing Party shall promptly deliver to the Party and the Secretariat a non-confidential summary of its written submissions.

26. The Presiding Body shall make the Disputing Parties' 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 22.

Prior Contact with Presiding Body Member Prohibited

27. A Party intending to appoint a Presiding Body member pursuant to any provision of this Chapter 12 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

28. The Complaint Recipient shall file a notice of appearance with the Secretariat within fifteen (15) days after receiving, from the Secretariat, a request for a Panel under Article 12.4.

29. The Secretariat shall forward copies of a notice of appearance received under Rule 28 to the other Party.

Panel Proceedings: Written Submissions

30. A Disputant that has requested a Panel shall file a written submission with the Secretariat within forty-five (45) days after the date on which it delivered the request to the Secretariat and the Secretariat shall forward a copy of the submission to the Complaint Recipient.

31. The written counter-submissions of the Complaint Recipient shall be filed with the Secretariat within forty-five (45) days after the initial written submission has been filed with the Secretariat and the Secretariat shall forward a copy of the written submissions to the Complainant.

32. The Panel may allow further written submissions and shall fix the time for their filing.

33. The Panel may convene a pre-hearing conference in order to determine:

    (a) the timing and the location of the hearing;

    (b) the order in which the Disputing Parties will be heard at the hearing;

    (c) subject to Rule 34, whether an issue in the dispute is within the scope of the Agreement; and

    (d) any other matter relevant to the Proceeding.

34. For the purposes of paragraph (c) of Rule 33:

    (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

35. The Panel shall fix the date for the hearing within thirty (30) days of receipt of the last written submission and the Secretariat shall forward notice of the date to the Disputing Parties.

36. The hearing shall, unless the Disputing Parties otherwise agree, be held in the capital city of the Complaint Recipient.

37. All Panelists must be present during the hearing. A Disputing Party who has not filed submissions may not present oral arguments without the consent of the Panel and the other Disputing Party.

38. 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;

    (b) argument of the Complaint Recipient;

    (c) reply of the Complaining Party.

39. Oral arguments shall be limited to the issues in dispute.

40. Where interpretation or translation services are used during a hearing, a Presiding Body shall ensure that Disputing Parties requiring such services are afforded sufficient additional time to make their arguments, presentations or replies.

Panel Proceedings: Supplementary Written Submissions

41. The Panel may at any time during a Proceeding address questions in writing to any of the Disputing Parties. The Panel shall deliver the written questions to the Disputing Party to whom the questions are addressed through the Secretariat, which shall also provide for delivery of copies of the questions to the other Disputing Party.

42. A Disputing Party 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 the other Disputing Party who 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

43. The Panel shall within forty-five (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 Disputing Parties and any other information received during the course of the Proceeding.

Notice of Suspension and Negotiation of Mutually Satisfactory Resolution

44. Where the Disputing Parties, 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.

45. Where the dispute Proceedings have been suspended by consent of the 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.

Appellate Panel

Notice of Appeal

46. A Disputing Party that decides to appeal shall provide to the Secretariat and the other Party a notice of appeal that briefly outlines its grounds of appeal and the relief sought.

47. No appeal may be taken if a notice of appeal has not been provided within thirty (30) days of the issuance of the Panel Report.

Written Submissions

48. Within seventy-five (75) days of the date of the Panel Report, the Appellant shall provide a written submission in support of its appeal to the Respondent and to the Secretariat.

49. Within forty-five (45) days of receipt of the Appellant's submission, the Respondent shall provide a written response to the Appellant and to the Secretariat.

Hearing

50. Upon receipt of the Notice of Appeal by the Secretariat, a hearing before the Appellate Panel shall be convened forthwith.

51. Except to the extent the Presiding Body otherwise directs,

    (a) the hearing shall be held in the capital city of the Respondent, 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

52. The Appellate Panel shall, within ninety (90) days of the completion of the hearing, issue a decision.

Compliance Panel

53. A Party making a request for a Compliance Panel shall do so in writing and shall deliver it to the other Disputing Party and to the Secretariat and shall include written submissions supporting its position.

54. 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 61.

55. A Disputing Party notified of a request for a Compliance Panel may, within sixty (60) days of receipt of such notice, provide a written reply to submissions delivered pursuant to Rule 53 and shall deliver it to the other disputing Party and to the Secretariat.

56. 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.

57. The Compliance Panel shall issue a Compliance Report within forty-five (45) days of the expiry of the deadline for submissions by disputing Parties under Rule 55 or, where a compliance hearing is held, within forty-five (45) days of the conclusion of the hearing.

Discontinuance

58. The Complaining 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 Disputing Party.

Convening of Panel under Article 12.16

59. Where a Panel is convened under Article 12.16(4) to determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party is manifestly excessive, the Panel shall issue its decision within forty-five (45) days after the matter is referred to it.

60. The Panel shall as soon as possible after being convened under Article 12.16(4), determine the manner in which it intends to proceed and shall through the Secretariat, notify the Disputing Parties thereof.

Unavailability of Panelist

61. Where a Panel is to be convened or reconvened pursuant to any provision of Chapter 12, and a Panelist is unable to participate, that Panelist shall be replaced by a bilingual Panelist selected by lot by the Secretariat excluding any person appointed to the roster by the disputing Parties, and ensuring that one member of the Panel has administrative law experience as outlined in Annex 1704(2) (Panel, Compliance Panel and Appellate Panel Rosters) of the *Agreement on Internal Trade*

Payment of Presiding Body Operational Costs

62. Unless otherwise specified, operational costs shall be divided equally between Disputing Parties. However, the Panel may apportion operational costs otherwise where justified by the following considerations:

    (a) whether the Disputants complied with Article 12.1;

    (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.

63. For greater certainty, any other costs incurred unilaterally by a Party including but not being limited to counsel, agents, or experts fees and disbursements shall be born exclusively by that Party.

PART VI

DEFINITIONS

Chapter Thirteen

Definitions

Article 13: Definitions of General Application

In this Agreement, except as otherwise provided:

Agreement means Trade and Cooperation Agreement between Ontario and Québec signed on September 11, 2009 and entered into force on October 1, 2009;

Agreement on Internal Trade means the intergovernmental accord signed by the federal, provincial and territorial governments of Canada on July 18, 1994, which came into force on July 1, 1995, as amended;

business day means any day other than a Saturday or Sunday or a holiday;

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 electronic 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 electronic form; or

(e) radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, cable broadcasting undertakings and all satellite programming and broadcast network services;

day or days means a calendar day or days and includes weekends and holidays;

document means information inscribed on a medium where the information is delimited and structured, according to the medium used, by tangible or logical features and is intelligible in the form of words, sounds or images. The information may be rendered using any type of writing, including a system of symbols that may be transcribed into words, sounds or images or another system of symbols;

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

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

(a) land, water and air, including all layers of the atmosphere, or any combination or part thereof;

(b) plant and animal life, including human life; and

(c) the interacting ecological systems which include paragraphs (a) and (b);

environmental measure means a measure to protect and conserve the environment, including a measure to protect human, animal or plant life or health;

existing measure means a measure adopted before the date of entry into force of this Agreement, being October 1, 2009;

government entities means any agencies, associations, boards, commissions, corporations, trusts or similar bodies that are owned or controlled by a Party;

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

holidays mean:

1) New Years Day and next day (January 1 and 2);
2) Ontario's Family Day (third Monday in February);
3) Good Friday (Friday before Easter);
4) Easter Monday (Monday after Easter);
5) Ontario's Victoria Day/Québec's National Patriot's Day (Monday before May 25);
6) Québec's National Holiday (June 24) or the next Monday, when June 24 falls on a weekend;
7) The anniversary of Confederation (July 1) or the next Monday, when July 1 falls on a weekend;
8) Ontario's Civic Holiday (first Monday in August);
9) Labour Day (first Monday in September);
10) Thanksgiving (second Monday in October);
11) Christmas Eve, Christmas Day and the next day (December 24, 25, 26); and
12) New Year's Eve (December 31).

Internal Trade Secretariat means the body established to provide administrative and operational support to the functioning of the *Agreement on Internal Trade*;

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;

Joint Committee on Regulatory Cooperation means the committee established pursuant to paragraph 1 of Article 3.6 (Joint Committee on Regulatory Cooperation) of the Agreement;

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

Ministerial Council means the council established pursuant to Article 2.2 (Ministerial Council) of this Agreement;

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, renaming 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 October 1, 2009 including any amendments or replacements of a measure, but does not include a renewal or extension of a measure;

non-Party means other Canadian provinces or territories, the federal government and foreign sovereign states;

Party means a Party to this Agreement and **Parties** means all of the Parties to this Agreement;

person means a natural person or an enterprise;

Private Sector Advisory Committee means the committee established pursuant to Article 2.4 (Private Sector Advisory Committee) of this Agreement;

reconciliation and terms of similar import means to reconcile, by harmonization, mutual recognition, or other means, regulatory and standards-related measures.

regulation means a regulatory requirement, as defined in Article 3.9 (Definitions);

Regulatory Registry means the public internet site maintained by the Government of Ontario on which regulatory proposals that may affect business are posted, located at http://www.ontariocanada.com/registry;

Secretariat means the Secretariat established pursuant to Article 2.3 (Secretariat);

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;

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

sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is based on a long-term approach which takes into account the inextricable nature of the environmental, social and economic dimensions of development activities.

PART VII

FINAL PROVISIONS

Chapter Fourteen

Final Provisions

Article 14.1: Accession and Withdrawal

1. In accordance with Article 1800 (Trade Enhancement Agreements) of the *Agreement on Internal Trade*, the Parties may agree to the accession to this Agreement of any Canadian province, territory or the Federal Government upon acceptance of its terms.

2. A Party may withdraw from this Agreement upon twelve (12) months written notice to the other Party.

Article 14.2: 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 14.3: Further Negotiations and Amendments

1. The Parties may enter into negotiations at any time to amend this Agreement.

2. Amendments to this Agreement require the mutual consent of the Parties and must be in writing and signed by the Ministers from each Party responsible for this Agreement.

Article 14.4: Entry into Force

1. This Agreement shall enter into force on October 1, 2009, except for the provisions otherwise specified in this Agreement.

2. Neither 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 14.5: Regional Economic Development

1. The Parties recognize that measures adopted or maintained by a 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. Parts III (General Rules) and IV (Specific Commitments and Rules) of this Agreement do not apply to a measure adopted or maintained by a 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 the other 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, notify the other Party of its existing programs relating to regional economic development;

   (b) on adoption of any program relating to regional economic development, notify the other Party of that program; and

   (c) answer rapidly, if need be, questions from the other Party on a program relating to regional economic development.

Article 14.6: Aboriginal Peoples

This Agreement does not apply to any measure adopted or maintained with respect to Aboriginal peoples.

Article 14.7: Culture, Language and Social Measures

Notwithstanding any other provision of this Agreement, except for the obligations set out in Chapter 3 (Regulatory Cooperation), any measure adopted or maintained with respect to culture, cultural industries, language requirements, education, health or social services is exempted from the provisions of this Agreement.

Article 14.8: Security Measures

For greater certainty, nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining a measure relating to public security.

Article 14.9: Taxation

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 14.10: Non-Conforming Measures

1. No Party shall amend a non-conforming measure in a manner that would further decrease the conformity of that measure with this Agreement.

2. A subsequent amendment 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 14.11: Rules of Interpretation

1. In this Article:

   (a) **Sector Chapter** means any of the following chapters:

      (i) Chapter 4: Energy Cooperation;

      (ii) Chapter 6: Labour Mobility;

      (iii) Chapter 7: Financial Services;

      (iv) Chapter 8: Transportation;

      (v) Chapter 9: Public Procurement;

      (vi) Chapter 10: Agriculture and Food Goods; and

      (vii) Chapter 11: Environment and Sustainable Development.

   (b) **General Chapter** means any of the following chapters:

      (i) Chapter 2: Economic Cooperation; and

      (ii) Chapter 3: Regulatory Cooperation.

   (c) A Sector Chapter applies to matters within its scope.

   (d) A General Chapter applies both to matters within its scope and, where appropriate, to matters that fall within the scope of a Sector Chapter.

   (e) In the event of an inconsistency between a Sector Chapter and a General Chapter, the Sector Chapter prevails to the extent of the inconsistency, except as otherwise provided.

   (f) For greater certainty, in the event of an inconsistency between two Sector Chapters or between two General Chapters, reference should be made to this Agreement as a whole, including the Preamble and Chapter 1 (Objectives) to determine which Chapter prevails to the extent of the inconsistency, except as otherwise provided.

2. In this Agreement:

   (a) reference to an Article includes any annex referred to in that Article;

   (b) words expressed in the singular include the plural and vice versa;

   (c) where the words "including" or "includes" appear in this Agreement, they mean "including without limitation" and "includes without limitation"; and

   (d) unless specified otherwise, reference in this Agreement to a statute or statutory provision refers to that statute or statutory provision as it may be amended or to any restated or successor statute or statutory provision of comparable effect. A reference to a statute includes any statutory instruments, rules and regulations made under such statute.

Article 14.12: Computing time limits

1. If the day fixed for doing anything falls on a weekend or any holiday, such thing may validly be done on the next business day.

2. In computing any time limit fixed by this Agreement or any of its provisions:

   (a) the day which marks the start of the time limit is not counted, but the last day is counted; and

   (b) weekends and holidays are counted, but when the last day falls on a weekend or on any holiday, the time limit is extended to the next business day.

TRADE AND COOPERATION AGREEMENT
BETWEEN
QUÉBEC and ONTARIO

Ontario

Québec

ACCORD DE COMMERCE ET DE COOPÉRATION
ENTRE
LE QUÉBEC ET L'ONTARIO

Signed in Toronto, on September 11 2009, one in French and other in English, both versions being regarded as equally authentic and valid.

FOR THE GOVERNMENT OF ONTARIO

Sandra Pupatello
Minister of Economic Development and Trade

FOR THE GOVERNMENT OF QUÉBEC

Clément Gignac
Ministre du Développement économique, de l'Innovation et de l'Exportation

Claude Béchard
Ministre responsable des Affaires intergouvernementales canadiennes et de la Réforme des institutions démocratiques