AGREEMENT ON INTERNAL TRADE
DISPUTE RESOLUTION PANEL

In the Matter of a Challenge by Saskatchewan with Respect to Quebec's Measures Regulating Edible Oil Products, Dairy Blends and Dairy Analogues

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Submission to the Panel by the Intervenor

THE GOVERNMENT OF ALBERTA

August 29, 2013

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Submission by the Intervenor,
The Government of Alberta

A. INTRODUCTION

1. The Government of Alberta ("Alberta") is an Intervenor in the dispute under the Agreement on Internal Trade ("AIT") between the Government of Saskatchewan ("Saskatchewan") and the Government of Quebec ("Quebec") regarding certain Quebec measures[1] ("Measures") pertaining to Dairy Alternatives.[2]

2. On June 24, 2013, the Internal Trade Secretariat notified Alberta that it had received a request pursuant to Article 1703(1) of the AIT from Saskatchewan for the establishment of a panel in this matter. By letter dated July 4, 2013, Alberta notified the Internal Trade Secretariat that, as a party with a substantial interest in this matter, Alberta intended to join the panel proceedings as an Intervenor, as provided for in Article 1703(9.1) of the AIT. As described more fully in this Submission, Alberta has a significant number of persons carrying on business in Alberta who are affected by the Quebec Measures and, thus, Alberta is deemed to have a substantial interest in this dispute pursuant to Article 1703(10)(b).

3. Alberta agrees with and supports the position of Saskatchewan as set out in the Submission of Saskatchewan to this Panel, dated August 8, 2013 ("Saskatchewan Submission"). Further, the Measures impair internal trade and have caused injury to the vegetable oilseed growers and food processing industries in Alberta.

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[1] See Tab H and Tab I to the Saskatchewan Submission and paragraphs 44 and 45 in the Saskatchewan Submission.

[2] "Dairy Alternatives" consist of "Dairy Analogues" (products made from vegetable oils with no dairy components and are alternatives to dairy products) and "Dairy Blends" (products made from a mixture of dairy and vegetable oil ingredients and resemble a dairy product). See paragraph 8 of the Saskatchewan Submission.

B. THE MEASURES

4. As described in the Saskatchewan Submission, *The Food Products Act*[3] of Quebec (the "FPA") prohibits the manufacture and sale of Dairy Alternatives, except to the limited extent provided for in the regulations to the FPA ("Regulations").[4] Thus, the following products, which can be sold in other parts of Canada, the United States and many other countries, are illegal in Quebec:

- Liquids/beverages containing both dairy and vegetable oils or fats
- Margarine-butter blends/spreads that contain dairy other than the limited non-fat milk solids content allowed in the Regulations
- Cheese blends and substitutes.

A US manufacturer, Milnot, produces an evaporated milk that contains both milk and soybean oil. Foothills Creamery, a Calgary-based manufacturer of butter and dairy products, produces "Foothills Blend", a butter substitute comprised of 50% butter and 50% margarine. Gay Lea, of Ontario, manufactures "Spreadables" and Devondale produces "Extra Soft" in Australia.[5] Vancouver-based Daiya produces a cheese substitute from vegetable oil. All of these products are <u>illegal</u> in Quebec.

5. Further, Section 7.2 of the FPA prohibits the sale of dairy product substitutes except those designated in the Regulations. The Regulations allow only five dairy product substitutes: margarine; liquid or powder coffee whitener; liquid or foam dessert topping (whipped cream substitute); frozen dessert mixes (ice cream mix substitutes); and frozen desserts (ice cream substitutes).[6] Further, Section 11.9.4 provides for composition standards for these limited dairy product substitutes and stipulates the amount of dairy that can be incorporated into those products. A consumer outside of Quebec with a dairy allergy can

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[3] R.S.Q., c.P-29, Section 7.1. See Tab H of Saskatchewan Submission.
[4] *Regulations Respecting Food*, R.S.Q.,c.P-29, R.1. See Tab I of the Saskatchewan Submission.
[5] See Appendix, Tab 1.
[6] Section 11.9.2 of the Regulations. See Tab I of Saskatchewan Submission.

purchase a vegetable-oil cheese substitute, like the BC producer Daiya's "Cheddar Style Slices", but it is illegal to sell this product in Quebec.[7]

C. ALBERTA CANOLA INDUSTRY

6. Canola is a significant source of vegetable oil and the canola industry is a major part of the Alberta economy. In 2011, Alberta farmers produced 53.3 million tonnes of canola, representing approximately 37% of total Canadian production of canola.[8] The net farm income of Alberta canola farmers in 2012 was $3 billion.[9] In a July 2011 report prepared for the Canola Council of Canada by LMC International, "The Economic Impact of Canadian Grown Canola and its End Products on the Canadian Economy",[10] the direct economic impact of the canola industry on Alberta was estimated at $2.5 billion annually.[11] The direct and indirect economic impact on Alberta was estimated at $4.4 billion.[12] These estimates are based on statistics from 2007-2010. Another, more conservative estimate suggests that the total direct economic benefit to Alberta of the canola industry was $1.9 billion in 2011.[13]

7. In addition to growing canola, Alberta has a canola crushing and processing industry. From 2007 to 2009, Alberta had a crushing capacity of 1,299,000 tonnes and this capacity is growing. Richardson Oilseed Limited has announced a major expansion of its crushing, refining and packaging plant in Lethbridge.[14] The expansion will double the plant's processing capacity from 1,200 tonnes of canola a day to approximately 2,400 tonnes a day. Further, Cargill Limited is constructing a new canola processing facility near Camrose, Alberta. This facility will have a capacity to process 850,000 tonnes of canola per year.[15] As

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[7] See Appendix, Tab 1.
[8] Alberta Canola Producers Commission Annual Report 2011-2012 ("ACPC Report"). See Appendix, Tab 2, at page 37.
[9] See Saskatchewan Submission, Tab P.
[10] See Appendix, Tab 3.
[11] See Appendix, Tab 3, at page 7.
[12] See Appendix, Tab 3, at page 54.
[13] See Appendix, Tab 4.
[14] See Appendix, Tab 5.
[15] See Appendix, Tab 6.

evidenced by the foregoing, the canola growing and processing industry is significant to Alberta's economy.

D. INJURY

8. Denial of an opportunity to provide goods that are like, directly competitive with or substitutable for products sold within the jurisdiction of a Party constitutes injury under the AIT. This principle has been established in the four panel reports referred to in the Saskatchewan Submission, *New Brunswick-Fluid Milk, Ontario-Dairy Analogues I, Ontario-Dairy Analogues II,* and *Quebec-Colored Margarine.*[16]

9. The FPA and the Regulations, together, deny a benefit to Alberta industry because the restrictions and prohibitions contained therein on the manufacture and sale of Dairy Alternatives in Quebec deny Alberta industry the opportunity to participate in the Quebec market. This denial of benefit impairs internal trade and constitutes injury. In this case, injury results specifically from the loss of opportunity (i) for Alberta manufacturers to sell their Dairy Alternatives to grocers, restaurants and the food processing industry in Quebec and (ii) for Alberta oilseed producers and processors to sell their products to retail and industrial manufacturers of Dairy Alternatives across Canada, because of the limited market in Quebec.

10. In both *Ontario-Dairy Analogues I* and *Ontario-Dairy Analogues II*, equivalent Ontario legislation was found to have impaired internal trade and caused injury. In *Ontario-Dairy Analogues I*, the panel stated that "the mere denial of the opportunity to market such products in Ontario is injury itself."[17] In *Ontario-Dairy Analogues II*, the panel referred to a 2010 letter from the Vegetable Oil Industry of Canada ("VOIC") which stated that the injury extended to over 12,000 canola growers and 5 major oilseed processing plants in Alberta as a result of the suppressed demand for vegetable oil. That panel accepted this evidence

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[16] See Saskatchewan Submission, paragraphs 114-116.
[17] See Saskatchewan Submission, Tab L at page 34.

and found that the denial of opportunity occurred, which constituted injury.[18] In the current dispute against Quebec's Measures, VOIC advises that the Quebec restrictions have a real and direct negative impact on Saskatchewan's canola producers and processors.[19] VOIC's comments equally apply to Alberta canola producers and processors.

11. Alberta oilseed growers and processors who produce the inputs used in Dairy Alternatives experience injury because Dairy Alternative producers are denied access to the Quebec market. An open market for Dairy Alternatives in Quebec would encourage increased innovation and development of new Dairy Blend products and new Dairy Analogues by food product manufacturers, and would lead to increased opportunity for oilseed growers and processors to supply to these manufacturers. Golden Gate, a Canadian margarine manufacturer, estimates that elimination of the Measures will result in "an immediate opportunity of 3 to 4 million dollars for Golden Gate in the bakery and food service markets, as well as a potential total market opportunity of about $20 million" (for the vegetable oil/dairy spreads market, a subset of the total market for Dairy Alternatives). Golden Gate has already been presented with opportunities to supply butter/vegetable oil blends to two Quebec bakery manufacturers, which want these products to streamline their production and improve their competitive ability, should this become legally possible in Quebec. However, these products remain illegal in Quebec.[20]

12. Although the Ontario market has now opened for Dairy Alternatives (as a result of the findings in *Ontario-Dairy Analogues II*), Quebec still accounts for approximately 23% of Canada's potential market.[21] Ontario accounts for approximately 39% of the Canadian market, so, together the Ontario and Quebec market accounts for approximately 62% of the Canadian market. Golden Gate advises that:

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[18] See Saskatchewan Submission, Tab N at page 26.
[19] See Tab A of the Saskatchewan Submission at page 2.
[20] See Appendix, Tab 7.
[21] See Saskatchewan Submission, Tab P, Table 051-0001.

> "Most national bakery manufacturers, good service operators and retailers resist the use or introduction of innovative blended products that cannot be sold nationally due to reduced scale and added complexity. These challenges are greatly increased when Quebec's 25% of the market prohibits the sale of these blended products."[22]

Thus, the immediate opening of the Quebec market will stimulate increased investment in new product development as well as enhance sales of existing Dairy Alternatives. The continued existence of the Measures clearly results in a loss of opportunity to Canadian oilseed growers and processers and manufacturers.

13. Finally, the continuing closure of the Quebec market also negatively affects consumers who desire or require products with reduced saturated fats, but have limited choice in these products. Consumers in Quebec are denied a broader range of dairy vegetable-oil products to meet the consumer desire for lower saturated fat and healthier alternatives to dairy products. As discussed in the Saskatchewan Submission,[23] Health Canada recognizes the health benefits of Dairy Alternatives.

E. FINDINGS

14. Alberta supports paragraph 117 of the Saskatchewan Submission. Further, Alberta requests that this Panel make the finding that the Measures have impaired internal trade and caused injury.

F. REMEDY

15. Alberta supports paragraph 118 of the Saskatchewan Submission.

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[22] See Appendix, Tab 7.
[23] Saskatchewan Submission, paragraphs 97-98.

G. OPERATIONAL COSTS

16. Alberta supports the arguments presented by Saskatchewan in paragraphs 119-123 of the Saskatchewan Submission. However, this dispute is the latest in a line of internal trade disputes regarding Dairy Alternatives.[24] Quebec has been on notice since the decision of the Panel in *Ontario-Dairy Analogues I* in 2004 that legislation equivalent to the Measures was in violation of the obligations of the AIT. (This was reaffirmed again in 2010, in *Ontario-Dairy Analogues II)*. Nine years have elapsed since the first panel decision on Dairy Alternatives; yet, Quebec continues to maintain its Measures. Furthermore, Quebec participated in the negotiations and agreed to the new AIT Chapter Nine, Agricultural and Food Goods,[25] which is aimed at strengthening the commitment to open trade in agricultural and food products and is intended to prevent unreasonable use of technical measures to diminish that open trade.[26] Yet, Quebec continues to maintain the Measures. Based on the forgoing, Alberta submits that the Panel award 100% of the Operational Costs to Quebec.

All of which is respectfully submitted.

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[24] *Ontario-Dairy Analogues I, Ontario-Dairy Analogues II,* and *Quebec-Colored Margarine,* see footnote 16, above.
[25] 11th Protocol of Amendment to the AIT, which came into effect on November 8, 2010.
[26] Press Release of the Council of the Federation, August 7, 2009. See Appendix, Tab 8