



**Trade, Investment  
and  
Labour Mobility  
Agreement**

**March 2009**

## FOREWORD

This consolidation combines the text of the original *Trade, Investment and Labour Mobility Agreement* (2007) together with all Protocols of Amendment which have been adopted since the signing of the *Agreement*.

This consolidation is comprised of the following documents:

<b>Document</b>	<b>Entry into Force</b>
Trade, Investment and Labour Mobility Agreement	April 1, 2007
First Protocol of Amendment	February 25, 2009
Second Protocol of Amendment	March 30, 2009

The consolidation is intended to be a working tool for those using the Agreement and does not constitute an official document. Those seeking the official text should refer to the original text and subsequent protocols which can be found on [www.tilma.ca](http://www.tilma.ca).

## TABLE OF CONTENTS

PART I – OPERATING PRINCIPLES .....	1
PART II .....	2
A. EXTENT OF OBLIGATIONS .....	2
Article 1: Relationship to the Agreement on Internal Trade .....	2
Article 2: Scope and Coverage .....	2
B. GENERAL RULES.....	2
Article 3: No Obstacles .....	2
Article 4: Non-Discrimination .....	2
Article 5: Standards and Regulations . . . . .	3
Article 6: Legitimate Objectives .....	3
Article 7: Transparency.....	4
Article 8: Rules Relating to Exceptions to the Agreement .....	4
Article 9: Transitional Measures.....	5
C. SPECIAL PROVISIONS .....	5
Article 10: Purpose .....	5
Article 11: Investment .....	5
Article 12: Business Subsidies.....	6
Article 13: Labour Mobility .....	6
Article 14: Procurement .....	7
Article 15: Energy .....	8
Article 16: Transportation .....	8
PART III – ADMINISTRATIVE PROVISIONS .....	10
Article 17: Ministerial Committee .....	10
Article 18: Ministerial Committee Structure and Procedures .....	10
Article 19: Administrative Facilities .....	10
Article 20: Accession and Withdrawal.. . . . .	11
Article 21: Further Negotiations .....	11
Article 22: Further Co-operation .....	11
Article 23: Entry Into Force .....	11
PART IV – DISPUTE RESOLUTION PROCEDURES .....	12
Article 24: Application .....	12
Article 25: Consultations .....	12
Article 26: Establishment of a Panel .....	13
Article 27: Panel Proceedings.....	14
Article 28: Implementation of Final Report.....	16
Article 29: Non-Implementation .....	16
Article 30: Determination of Monetary Awards .....	17
Article 31: Judicial Review .....	17
Article 32: Costs and Remuneration .....	17
Article 33: Abridgement or Extension of Time Periods .....	18
Article 34: Other Provisions .....	18

## TABLE OF CONTENTS

PART V – EXCEPTIONS TO THE AGREEMENT .....	19
BOTH PARTIES.....	19
General Exceptions .....	19
Business Subsidies .....	19
Government Procurement .....	19
Energy and Minerals.....	20
Transportation .....	20
Regional Economic Development.....	21
Forests, Fish and Wildlife .....	21
Environment .....	21
ALBERTA .....	21
Investment.....	21
Energy .....	22
Agriculture .....	22
BRITISH COLUMBIA.....	22
Energy .....	22
Transportation .....	23
Agriculture .....	23
PART VI – GENERAL DEFINITIONS.....	24
APPENDIX 1 – TRANSITIONAL MEASURES.....	28
SIGNATURE PAGE .....	29

**PART I**  
**OPERATING PRINCIPLES**

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

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

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

ENHANCE competitiveness, economic growth and stability in Alberta and British Columbia;

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

REDUCE costs for consumers, businesses and governments;

PROVIDE access to information and programs to facilitate labour mobility and business establishment;

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

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

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

RESOLVE disputes in an effective, inexpensive and timely manner;

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

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

**HEREBY AGREE** as follows:

## PART II

### A. EXTENT OF OBLIGATIONS

#### Article 1: Relationship to the Agreement on Internal Trade

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

#### Article 2: Scope and Coverage

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

### B. GENERAL RULES

#### Article 3: No Obstacles

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

#### Article 4: Non-Discrimination

1. Each Party shall accord to:
  - (a) like, directly competitive or substitutable goods;

- (b) persons;
- (c) services; and
- (d) investors or investments

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

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

#### **Article 5: Standards and Regulations**

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

#### **Article 6: Legitimate Objectives**

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

3. No Party shall prohibit or restrict an investment or the import of any good or service from the other Party or the export of any good or service to the other Party for a legitimate objective unless the prohibition or restriction on investment or the import of the like good or service from all non-Parties or the export of the like good or services to all non-Parties is similarly prohibited or restricted.

#### **Article 7: Transparency**

1. Each Party shall ensure that its measures covered by this Agreement are made readily accessible.
2. A Party proposing to adopt or amend a measure that may materially affect the operation of this Agreement shall, to the extent practicable:
  - (a) notify the other Party of its intention;
  - (b) provide a copy of the proposed measure to the other Party on request; and
  - (c) provide the other Party with an opportunity to comment on the measure, and take such comments into consideration.
3. Each Party shall ensure that documents requested by the other Party or interested persons of a Party are supplied in a non-discriminatory manner and that any fees charged therefor are reasonable.
4. Nothing in this Agreement shall be construed to require a Party to provide or allow access to information the disclosure of which would:
  - (a) be contrary to its freedom of information or privacy legislation;
  - (b) impede law enforcement;
  - (c) prejudice the legitimate commercial interests of particular enterprises;
  - (d) involve a waiver of privilege; or
  - (e) otherwise be contrary to the public interest.
5. This Article applies notwithstanding any other provision of this Agreement.
6. The provision of notice under paragraph 2 is without prejudice as to whether the measure is consistent with this Agreement.

#### **Article 8: Rules Relating to Exceptions to the Agreement**

1. With the exception of this Article, measures listed in Part V are not subject to Parts II and IV, except as otherwise provided in Part V.

2. Additional measures may be added to Part V only by mutual consent of the Parties.
3. A Party may, of its own accord, remove any of its measures listed in Part V.

#### **Article 9: Transitional Measures**

1. Those measures listed in Appendix I are subject to the rules set out therein.

### **C. SPECIAL PROVISIONS**

#### **Article 10: Purpose:**

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

#### **Article 11: Investment**

1.
  - (a) Parties shall reconcile their business registration and reporting requirements so that an enterprise meeting such requirements of one Party shall be deemed to have met those of the other Party.
  - (b) Parties and their municipal governments shall consider options to provide for the reconciliation of municipal business licenses. Until such time as the matter is resolved, Article 11(1)a) will not apply to municipal business licenses.
2. No Party shall require an enterprise of the other Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities.
3. A requirement by a Party that an enterprise has an agent located within its territory for service of notices of proceedings or other judicial documents is deemed not to be a requirement to establish or maintain a local presence or to be resident in its territory. Parties shall further consider options for eliminating measures requiring the designation or maintenance of agents for service.

4. Nothing in this Agreement shall be construed to prevent a Party from maintaining, designating, or regulating a monopoly for the provision of goods or services within its own territory.

#### **Article 12: Business Subsidies**

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

unless such subsidy is to offset a subsidy being offered by a non-Party or a government entity not subject to this Article.
2. Parties shall jointly encourage non-Parties to eliminate subsidies to business and refrain from bidding wars.

#### **Article 13: Labour Mobility**

1. Subject to paragraph 4, any worker certified for an occupation by a regulatory authority of a Party shall be recognized as qualified to practice that occupation by the other Party.
2. For greater certainty, requirements imposed on workers to obtain a license or to register with a Party or one of its regulatory authorities prior to commencing work within the territory of that Party shall be deemed to be consistent with paragraph 1 provided that no material additional training or examinations are required as part of that registration procedure and such registrations are processed on a timely basis.
3. Any worker certified to practice a trade under the Red Seal Program shall be recognized as qualified to practice that trade in both Parties.
4. A Party may adopt or maintain an occupation-related measure considered to be inconsistent with Part II where that measure relates to a difference between the Parties in the permitted scope of practice of an occupation.
5. Further to Article 7, each Party shall ensure that any requirements imposed on workers to register with a regulatory authority prior to commencing work are published on that regulatory authority's website or through a readily available website of the Party.

6. Occupations requiring certification, registration or licensing prior to commencing work in only one of the Parties shall be listed on the Labour Mobility Transparency List published on [www.tilma.ca](http://www.tilma.ca).
7. A Party shall advise the other immediately of the addition or deletion by the advising Party of any occupation on the Labour Mobility Transparency List and any change made by that Party to the title of any occupation included on that list.
8. A Party shall:
  - (a) amend its list of occupations on the Labour Mobility Transparency List after any change made by it to that list pursuant to paragraph 7;
  - (b) maintain an up to date copy of its list of occupations on the Labour Mobility Transparency List;
  - (c) forward a revised list of occupations on the Labour Mobility Transparency List to the other Party after every such change; and
  - (d) ensure a revised list of occupations on the Labour Mobility Transparency List is published on [www.tilma.ca](http://www.tilma.ca) after every such change.
9. This Article 13 does not apply to occupations that are regulated by one Party only, regardless of whether it is listed on the Labour Mobility Transparency List. Once a Party regulates a previously unregulated occupation that is regulated by the other Party, that occupation is bound by the terms of this Agreement, regardless of whether such occupation is listed on the Labour Mobility Transparency List.

#### **Article 14: Procurement**

1. Further to Articles 3 and 4, Parties will provide open and non-discriminatory access to procurements of the following government entities:
  - (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of a Party where the procurement value is:
    - (i) \$10,000 or greater for goods;
    - (ii) \$75,000 or greater for services; or
    - (iii) \$100,000 or greater for construction; and
  - (b) regional, local, district or other forms of municipal government, school boards, publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding entities where the procurement value is:
    - (i) \$75,000 or greater for goods;
    - (ii) \$75,000 or greater for services; or

- (iii) \$200,000 or greater for construction.
- 2. Articles 3 and 4 do not apply to any procurement under the thresholds specified in paragraph 1.
- 3. Parties shall ensure that procuring government entities post tender notices for all covered procurement through an electronic tendering system or systems provided by the Party. Additional means of providing notices may be used.
- 4. Parties shall consider options to improve the dispute settlement process as it relates to procurement, including the development of an effective bid protest mechanism. Until such time, the monetary award provisions of Articles 29, 30 and 31 do not apply to any disputes relating to procurement measures or specific procurements by covered government entities.
- 5. Entities covered by this Article 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 Agreement and neither Party shall direct the procurement activities of buying groups in a manner inconsistent with this Agreement.

#### **Article 15: Energy**

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

#### **Article 16: Transportation**

- 1. Parties shall require all vehicles owned by a person of a Party to be licensed and registered in the Party where the person is ordinarily resident.
- 2. Each Party shall provide full and free registration reciprocity for temporary inter- and intra-provincial vehicle operations as provided for by the *Canadian Agreement on Vehicle Registration (CAVR)* without exceptions or additional registration fees for those Category B vehicles described in paragraph 1(a)(i) of CAVR. For the purposes of this Agreement, temporary intra-provincial operation as referenced in paragraph 4 of CAVR means operation for a period of up to 90 days in a calendar year. A Party may require carriers operating such vehicles in

its territory in excess of 90 days in any calendar year to obtain a prorated license or temporary operating permit.

3. Upon request, a Party shall identify to the other its carriers having a National Safety Code number for any vehicle with a licensed gross vehicle weight of less than 11,794 kg.
4. Parties shall continue to work toward the enhancement of public safety and preservation of highway infrastructure through measures relating to cargo securement, and vehicle configurations, weights and dimensions.

## **PART III**

### **ADMINISTRATIVE PROVISIONS**

#### **Article 17: Ministerial Committee**

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

#### **Article 18: Ministerial Committee Structure and Procedures**

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

#### **Article 19: Administrative Facilities**

1. Parties shall either establish a Secretariat or appoint one or more administrators prior to the entry into force of this Agreement.
2. Each Party shall maintain a contact point for the other Party or interested persons of a Party to answer or refer reasonable enquiries and to provide information in a timely manner pertaining to its existing and proposed measures and other matters covered by this Agreement. The contact points will be published on both Parties' websites.
3. The contact points shall publish the contact details for the administrator for the purposes of Part IV.

#### **Article 20: Accession and Withdrawal**

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

#### **Article 21: Further Negotiations**

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

#### **Article 22: Further Co-operation**

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

#### **Article 23: Entry Into Force**

1. This Agreement shall enter into force on April 1, 2007.

## PART IV

### DISPUTE RESOLUTION PROCEDURES

#### Article 24: Application

1. This Part applies to the avoidance and resolution of disputes between Parties, or between persons and Parties, regarding the interpretation or application of this Agreement.
2. Further to Article 25(2), where a dispute falls within the jurisdiction of a regulatory body with an established dispute resolution process, that process shall first be used prior to utilizing the procedures set out in this Part. An illustrative list of regulatory bodies with such dispute resolution processes can be found at [www.tilma.ca](http://www.tilma.ca). This list shall be updated by either Party as circumstances require.
3. Where a Party or person believes that a measure is inconsistent with both the *Agreement on Internal Trade* and this Agreement, they must choose which agreement's dispute resolution process to use and, once chosen, will have no recourse to the other process regarding that same measure.

#### Article 25: Consultations

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

5. Following the rejection of its request under paragraph 4, the person may, within six months, request in writing to the contact point of the responding Party that the responding Party enter into consultations with that person to resolve the matter.
6. In a request for consultations under paragraph 1, 3 or 5, the Party or person, as applicable, requesting consultations shall:
  - (a) provide the factual basis for the matter at issue, including the existing or proposed measure at issue;
  - (b) list those provisions of this Agreement it considers to apply to the matter;
  - (c) describe in detail the alleged inconsistency; and
  - (d) provide an address for service.

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

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

#### **Article 26: Establishment of a Panel**

1. Prior to the entry into force, each Party will establish and maintain a list of at least five individuals to act as panellists. If a Party fails to establish or maintain a list, the other Party's roster of panellists shall be exclusively used.
2. If, following consultations under Article 25, the consulting parties have failed to resolve the matter, either of them may request the establishment of a panel to consider the matter. Such request shall be made in writing to the other consulting party. A copy of the request shall be delivered to the administrator and the Ministerial Committee.
3. In order to access the panel process established under this Article, a person must acknowledge, in writing, its consent thereto and such consent shall be included with the request made under paragraph 2.

4. If more than one administrator has been designated, the administrator located within the territory of the responding Party will administer the dispute.
5. Once the request has been delivered under paragraph 2, each disputant shall select a panellist within 15 days. If the disputants are Parties, they each shall select a panellist from the other Party's list. If one of the disputants is a person, that person shall select a panelist from the responding Party's list and the responding Party shall select a panellist from the other Party's list. If a disputant fails to select a panellist within 15 days, the chosen panellist shall select the second panellist by lot from the applicable list of the disputant which has failed to choose a panellist.
6. Within 10 days of their appointment, the two panellists shall choose, by consensus, a panellist from the lists of their Parties to chair the proceedings. If the two panellists are unable to agree, they shall choose a chair by lot from the lists of the Parties.
7. As an alternative to the panel selection process under paragraphs 5 and 6, the disputants may, by mutual consent and within 15 days of the commencement of the selection process under paragraph 5, choose a single panellist to consider the matter.
8. All panellists selected must be independent and impartial in the matter under dispute.

#### **Article 27: Panel Proceedings**

1. Except as otherwise specifically provided in this Part, the panel shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules.
2. Within 7 days of the panel being established, the complainant will also provide to the administrator a copy of the request for consultations issued under Article 25(6) and, if that complainant is a person, that person will provide to the administrator and the other disputant a copy of the notice, if any, issued under Article 25(4).
3. Subject to the requirements of this Part, the panel shall determine the manner in which it intends to proceed and, through the administrator, shall so notify the disputants.
4. In a dispute where one of the disputants is a person, the non-disputing Party may make oral and written submissions to the panel regarding the interpretation of this Agreement.

5. Without prejudice to a panel's authority to address other objections as preliminary questions, a panel shall address and decide as a preliminary question any objection by the responding Party that the matter under dispute is not one for which an award in favour of the complainant may be made under this Agreement.
6. Subject to Article 7(4) and any concerns relating to confidential information, panel hearings shall be open to the public, and the panel shall determine, in consultation with the disputants, the appropriate logistical arrangements therefor.
7. The hearing of the matter shall take place within 45 days of the establishment of the panel under Article 26 and shall take place at a location within the territory of the responding Party, as determined by the panel.
8. On agreement of the disputants, the panel process may be terminated at any time prior to the issuance of the panel's final report.
9. The panel shall, within 45 days of hearing the dispute, issue a report to the disputants that contains:
  - (a) findings of fact;
  - (b) rulings on any applicable interpretations and whether the measure at issue is or would be inconsistent with this Agreement;
  - (c) any findings as to the possible economic effect of the measure;
  - (d) recommendations, if any, to resolve the dispute; and
  - (e) specification of a reasonable period of time for implementation of the panel's recommendations, which shall be no longer than one year from the issuance of the report.
10. Within 10 days of the delivery of the panel report to the disputants, either disputant, with notice to the other disputant, may request in writing to the administrator that the panel clarify or reconsider any part of the panel report. If no such request is received by the administrator within that 10-day period, the panel's report will be considered to be final.
11. Within 5 days of delivery of a request to the administrator under paragraph 10, the other disputant may provide a response thereto to the administrator. The panel shall, within 15 days of delivery of the initial request to the administrator, provide the requested clarification or rule on the requested reconsideration. Thereafter, the panel's report, including any clarification or reconsideration thereof issued by the panel, will be considered to be final.
12. The final report of the panel is binding on the disputants and, subject to Article 7(4) and any concerns relating to confidential information, shall be made public.

## **Article 28: Implementation of Final Report**

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

## **Article 29: Non-Implementation**

1. If a disputant believes the panel's final report or the agreement reached between the disputants under Article 28 has not been complied with, that disputant may request that a panel be convened to determine whether there has been compliance. Such request shall be made in writing to the administrator and to the other disputant. A copy of the request shall be delivered to the Ministerial Committee.
2. The panel established to determine if there has been compliance shall be composed of the original panellists unless otherwise agreed to by the disputants. Any new panellist, or any panellist that is unwilling or unable to participate, shall be replaced using the process established under Article 26(5), (6) and (7).
3. The panel shall convene within 30 days after the date of delivery of the request to the administrator. The panel shall determine the manner in which it intends to proceed and, through the administrator, shall so notify the disputants.
4. Subject to Article 7(4) and any concerns relating to confidential information, panel hearings shall be open to the public and the panel shall determine, in consultation with the disputants, the appropriate logistical arrangements therefor.
5. In a dispute where one of the disputants is a person, the non-disputing Party may make oral and written submissions to the panel regarding compliance with the panel's final report.
6. The panel shall, within 30 days of being convened, determine whether the final report or the agreement reached between the disputants has been complied with and issue a compliance report.
7. Subject to Article 14(4), if the panel determines that there has not been compliance, it shall:
  - (a) if the disputants are both Parties, issue a monetary award determined in accordance with Article 30 or authorize retaliatory measures of equivalent economic effect, or both; or
  - (b) if one of the disputants is a person, issue a monetary award determined in accordance with Article 30.

8. Subject to any judicial review initiated under Article 31, any remedy determined under paragraph 7 shall be effective at a time of the panel's discretion.

### **Article 30: Determination of Monetary Awards**

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

### **Article 31: Judicial Review**

1. A disputant may, within 15 days after the delivery to the disputants of any compliance report that has awarded a monetary award under Article 29(7), request judicial review of that report under:
  - (a) section 30 of the *Commercial Arbitration Act* (RSBC 1996 c. 55) if the responding Party is British Columbia; and
  - (b) paragraphs 45(1)(c) and (f) through (i), and subsection 45(8) of the *Arbitration Act* (RSA 2000, c. A-43) if the responding Party is Alberta

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

2. The effective time of any award as determined by the panel under Article 29(7) shall be suspended during the period of any judicial review under this Article.

### **Article 32: Costs and Remuneration**

1. The panel may apportion costs at its discretion. For greater certainty, if the disputants agree to terminate the panel proceedings prior to the issuance of the panel's final report under Article 27(8), the panel retains the power to apportion any costs incurred up to such termination.

2. Each Party shall provide under its laws that any monetary award issued under Article 29(7), or any award of costs under paragraph 1, shall be enforceable in the same manner as an order issued by that Party's superior court.
3. Parties shall, prior to the entry into force of this Agreement, and thereafter every five years, establish the amounts of remuneration and expenses that will be paid to administrators, panellists, or any experts that they may engage.

### **Article 33: Abridgement or Extension of Time Periods**

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

### **Article 34: Other Provisions**

1. A person may not initiate proceedings under this Part if more than two years have elapsed from the date on which the person first acquired, or should have first acquired, knowledge of the alleged inconsistency.
2. A person may not initiate any proceedings under this Part regarding any measure that is already the subject of proceedings under this Part until such time as those ongoing proceedings have been completed.
3. Parties shall establish a code of conduct governing panellists prior to entry into force of the Agreement.
4. The Parties may, at any time, issue a joint decision declaring their interpretation of this Agreement. All such joint decisions shall be binding on panels and any subsequent decision or award by a panel issued under this Part must be consistent with such joint decisions.

**PART V**  
**EXCEPTIONS TO THE AGREEMENT**  
**BOTH PARTIES**

**General Exceptions**

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

**Business Subsidies**

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

**Government Procurement**

1. Articles 3, 4 and 14 do not apply in the circumstances listed below in paragraph 2 provided that procurement procedures are not used by the procuring Party to avoid competition, discriminate between suppliers, or protect its suppliers.
2. Procurements:
  - (a) from philanthropic institutions, prison labour or persons with disabilities;
  - (b) from a public body or a non-profit organization;

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

## **Energy and Minerals**

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

## **Transportation**

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

## **Regional Economic Development**

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

## **Forests, Fish and Wildlife**

1. Measures adopted or maintained relating to:
  - (a) the licensing, certification, registration, leasing or other disposition of rights to the harvesting of forest or fish resources;
  - (b) the management or conservation of forests, fish and wildlife; or
  - (c) requirements that timber be used or manufactured within the territory of a Party.

## **Environment**

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

## **ALBERTA**

### **Investment**

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

3. *Wildlife Act* requires residency for:
  - (a) Registered Fur Management;
  - (b) Registered Fur Management Partner; and
  - (c) Resident Fur Management.

## **Energy**

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

## **Agriculture**

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

## **BRITISH COLUMBIA**

## **Energy**

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

## **Transportation**

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

## **Agriculture**

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

**PART VI**  
**GENERAL DEFINITIONS**

In this Agreement:

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

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

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

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

**buying group** means a group of two or more members which combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.

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

**complainant** means the Party or a person that has requested the establishment of a panel under Article 26;

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

services related to the construction contract unless they are included in the procurement;

**consulting parties** means the Party or person that has initiated consultations under Article 25, and the responding Party;

**disputants** means a Party or person that has requested the establishment of a panel under Article 26, and the responding Party;

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

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

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

**government entity** means a Party's:

- (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of government;
- (b) Crown Corporations, government-owned commercial enterprises, and other entities that are owned or controlled by the Party through ownership interest;
- (c) regional, local, district or other forms of municipal government as well as any corporation or entity owned or controlled by any such form of municipal government;
- (d) school boards, publicly-funded academic, health and social service entities as well as any corporation or entity owned or controlled by one or more of the preceding entities; and
- (e) non-governmental bodies that exercise authority delegated by law;

**investment** means:

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

**investor** means:

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

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

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

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) conservation and prevention of waste of non-renewable or exhaustible resources;
- (f) consumer protection;
- (g) protection of the health, safety and well-being of workers;
- (h) provision of social services and health services within the territory of a Party;
- (i) affirmative action programs for disadvantaged groups; or
- (j) prevention or relief of critical shortages of goods essential to a Party

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

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

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

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

**party** means either signatory to this Agreement;

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

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

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

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

**regulation** means a standard that has been adopted into law;

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

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

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

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

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

**standard** means a specification, approved by a Party or by a recognized body, that sets out the rules, guidelines or characteristics for:

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

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

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

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

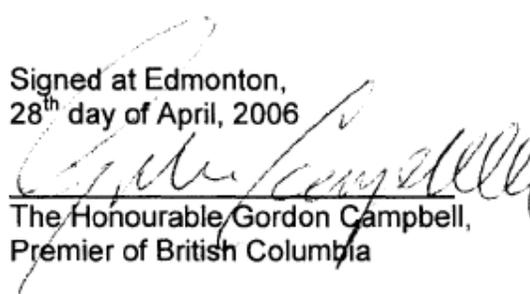
## APPENDIX I

## TRANSITIONAL MEASURES

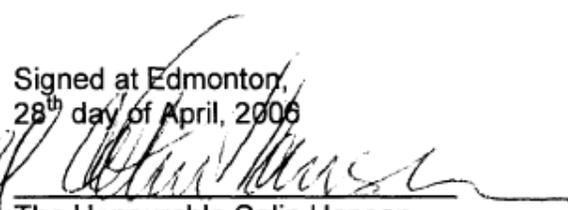
1. Measures listed in this Appendix are not subject to Parts II and IV, except as otherwise provided herein.
2. The Ministerial Committee shall oversee any consultations and negotiations relating to this Appendix and approve any amendments thereto.
3. Parties shall:
  - (a) ensure that no measure listed in this Appendix is amended or renewed in a manner that would decrease its consistency with this Agreement; and
  - (b) seek to minimize any adverse effects on the other Party or its persons of measures listed in this Appendix.
4. A Party may, of its own accord, remove any of its measures listed in this Appendix.
5. Additional measures may be added to this Appendix only by mutual consent of the Parties.

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

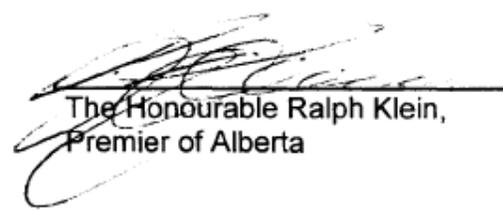
Signed at Edmonton,  
28<sup>th</sup> day of April, 2006

  
The Honourable Gordon Campbell,  
Premier of British Columbia

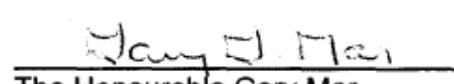
Signed at Edmonton,  
28<sup>th</sup> day of April, 2006

  
The Honourable Colin Hansen,  
Minister of Economic Development,  
and Minister Responsible for the Asia-Pacific  
Initiative and the Olympics,  
Government of British Columbia

Signed at Edmonton,  
28<sup>th</sup> day of April, 2006

  
The Honourable Ralph Klein,  
Premier of Alberta

Signed at Edmonton,  
28<sup>th</sup> day of April, 2006

  
The Honourable Gary Mar,  
Minister of International and Intergovernmental  
Relations, Government of Alberta