AGREEMENT ON INTERNAL TRADE

APPELLATE PANEL

IN THE MATTER OF A CHALLENGE BY SASKATCHEWAN WITH RESPECT TO QUEBEC'S MEASURES REGULATING EDIBLE OIL PRODUCTS, DAIRY BLENDS AND DAIRY ANALOGUES

SUBMISSION ON BEHALF OF THE RESPONDENT GOVERNMENT OF SASKATCHEWAN

AUGUST 18, 2014

SASKATCHEWAN MINISTRY OF JUSTICE AND THE ATTORNEY GENERAL
8TH FLOOR – 1874 SCARTH ST.
REGINA, SASKATCHEWAN
S4P 4B3

SUBMISSION ON BEHALF OF THE GOVERNMENT OF SASKATCHEWAN

1. Introduction

[1] Saskatchewan files this submission in response to Quebec's appeal of the March 31, 2014 Report of the Dispute Resolution Panel (the "Panel") appointed to resolve a dispute between Saskatchewan and Quebec concerning Dairy Blends, Dairy Analogues and Dairy Alternatives, pursuant to Article 1703 and 1706 of the Agreement on Internal Trade ("AIT"), and for which interventions were also made by the provinces of Alberta, British Columbia and Manitoba.

[2] Saskatchewan submits the Panel made no error of law, did not fail to observe any principle of natural justice, and did not act beyond or refuse to exercise its jurisdiction. It is Saskatchewan's position that this Appellate Panel should confirm the Panel Report in its entirety, pursuant to Article 1706.1(4)(a) of the AIT.

[3] Saskatchewan submits that to the extent that certain grounds of appeal can have no effect on the Panel's recommendations, this Appellate Panel should refuse to entertain such questions of law.

2. Jurisdiction of the Appellate Panel

[4] Saskatchewan observes this is the first occasion that an AIT dispute panel report is being appealed. It is therefore appropriate to address fundamental questions concerning the questions of scope of appeal and standard of review.

A. Scope of Appeal

[5] Article 1706.1 confines this Appellate Panel's jurisdiction to review the Panel Report for errors of law, breaches of principles of natural justice, and jurisdictional errors.

[6] Excluded from the scope of appeal are questions of fact as well as questions of mixed fact and law. Also excluded from the scope of appeal are conclusions based on findings of fact and law where an appellate panel is simply invited to arrive, *de novo*, at different

conclusions than the original panel. Appellate panel review under Article 1706.1 should not simply be a rehearing of the original panel.

B. Standard of Review

[7] The AIT does not explicitly specify the standard of review for this Appellate Panel. The two broad possibilities in the context of Canadian administrative tribunal review are the standards of correctness and reasonableness.

New Brunswick v. *Dunsmuir*, 2008 SCC 9 at para. 43-50. **[TAB A]**

[8] Different principles apply to appellate review, although principles of deference apply in both contexts.

Canada (CHRC) v. *Canada (A.G.)*, 2011 SCC 53 at para 30, 31. **[TAB B]**

[9] It is submitted that, despite the chosen terminology of "Appellate" in the context of article 1706.1, the function of an AIT Appellate Panel is in the nature of review for purposes of determining the standard of review.

[10] Under the AIT (Articles 1703, 1704), disputants choose their arbiters according to a closed system arrived at through Agreement. Their conclusions should not be lightly disturbed. More instructive is the contrasting expertise required between panel members and appellate members found in Annex 1704(2). Panel members are to have expertise or experience in matters covered by the AIT (Annex 1704(2)(3)), whereas appellate roster members are instead to have expertise in Canadian administrative law or the resolution of disputes arising under Canadian administrative law (Annex 1704(2)(9)). This is in direct contrast, for example, to the expertise required in the international context of the Appellate Body as established under Article 17(3) of the *Dispute Settlement Understanding* ("DSU") of the World Trade Organization ("WTO"). **[TAB C]**

[11] Saskatchewan submits that it is important for this, the first Appellate Panel, to contrast its role distinctly from the role of the WTO Appellate Body for this reason. In contrast to an AIT appellate panel, the WTO Appellate Body is a permanent standing body, comprised of persons of recognized authority, with demonstrated expertise in "international trade and the subject matter of the covered agreements generally". There is no corresponding body in

the context of the AIT. *Ad hoc* appellate panels are not expected to provide a supervisory role in ensuring overall consistency in the development of the law of internal trade.

[12] The principles outlined in the rules relating to Operational Costs Apportionment and Tariff Cost Awards found in Rules 47.1 to 48.5 in Annex 1705(1) further reveal an intent of the Parties to discourage non-meritorious appeals – clearly designed to favour panel deference.

[13] Although past panels have recognized the advantage and desirability of consistency between panel reports, there is no principle of *stare decisis* at work. There is therefore no need for an appellate panel to adopt a supervisory role of settling issues of law in a binding way for dispute panels in the manner of a Court of Appeal supervising the common law.

[14] The limited scope of review (described above) is also suggestive of a restrained standard of review.

[15] Appellate panel review in the context of AIT dispute resolution, it is submitted, is a safety valve to prevent serious violations of principles of fairness and jurisdictional errors as well as unreasonable conclusions of law. It is not an invitation for a second panel, expert in principles of administrative review rather than in trade law, to second-guess reasonable and consistent conclusions concerning the interpretation of the AIT, which is to be within the specialized ken of the dispute resolution panels.

[16] The operating principles of the AIT, spelled out in Chapter 1, include the importance of dispute settlement that is accessible, timely, credible and effective (Article 101(4)(d)). To achieve this, it is important that appellate panels not interfere with panel reports absent clear and serious errors. The priority of expeditiousness is also reflected in Article 1705(3).

[17] Both the need to limit the number of appeals and the importance of preserving the economy and integrity of the initial decision maker have been recognized as additional reasons for employing a standard of reasonableness, and specifically so in the context of review by a second administrative tribunal:

Newton v. *Criminal Trial Lawyers' Association* 2010 ABCA 399 at para. 42, 43. **[TAB D]**

[18] Under the *Dunsmuir* test the ordinary standard of review is that of reasonableness. Saskatchewan submits that Article 1706.1 sets out a regime that, under the *Dunsmuir* test, leads to a conclusion that the appropriate standard of review is that of reasonableness.

> *Dunsmuir, supra* at paras. 51 – 64. **[TAB A]** See also, more recently, *McLean* v. *B.C. (Securities Commission)*, 2013 SCC 67at paragraphs 19 to 33. **[TAB E]**

[19] The presumption of the standard of reasonableness is one that the Supreme Court has consistently maintained, notably in May and June of this year.

> *Canadian National Railway* v. *Canada*, 2014 SCC 40 at para. 55. **[TAB F]**
>
> *Canadian Artists' Representation* v. *National Gallery of Canada*, 2014 SCC 42 at para. 13. **[TAB G]**

[20] Article 906 of the AIT operates as a privative clause, limiting contractual remedies between the parties to the agricultural commitments within the AIT to specific processes. Article 1707.4 makes this explicitly clear. Chapter 17 represents the specialized regime for accessing limited remedies under the Agreement. These circumstances meet the first two conditions in the summary in *Dunsmuir, supra* at para. 55:

> A consideration of the following factors will lead to the conclusion that the decision maker should be given deference and a reasonableness test applied:
>
> — A privative clause: this is a statutory direction from Parliament or a legislature indicating the need for deference.
>
> — A discrete and special administrative regime in which the decision maker has special expertise (labour relations for instance).
>
> — The nature of the question of law. A question of law that is of "central importance to the legal system . . . and outside the . . . specialized area of expertise" of the administrative decision maker will always attract a correctness standard (*Toronto (City) v. C.U.P.E.*, at para. 62). On the other hand, a question of law that does not rise to this level may be compatible with a reasonableness standard where the two above factors so indicate.

See *UL Canada* v. *Quebec A.G.*, [1999] R.J.Q. 1720 (C.S.Q) at paras. 96-123 (aff'd, [2000] J.Q. no. 163 (Q.C.A.); 2005 SCC 10). **[TAB H]**

[21] The third indicium of a reasonableness standard (*Dunsmuir*, para. 55, quoted above) is the examination of the nature of the questions of law. The questions in issue primarily concern the interpretation of the AIT rather than questions of broader law or policy. This naturally requires deference of an appellate panel when considering the specialized interpretations of the dispute resolution panel. There may arise questions in an AIT appeal (such as those raising constitutional issues) that are properly approached with a correctness standard, but it is submitted that there are none such here.

Dunsmuir, supra, at para. 55 – 61. **[TAB A]**

[22] The *Dunsmuir* test, in August of this year, was most recently found by the Supreme Court of Canada, to apply in the context of commercial arbitration where review is limited to questions of law. Again, the standard of reasonableness applies except to questions that are of central importance to the legal system as a whole and outside of the particular expertise of the original decision maker.

Sattva Capital Corp v. *Creston Moly Corp.*, 2014 SCC 53 at para. 106. **[TAB I]**

3. Quebec's Grounds for Review

[23] Saskatchewan submits that none of Quebec's grounds for appeal establish that the Panel committed an error in law or jurisdiction or amounted to a breach of natural justice. All of its conclusions of law are reasonable and correct and represent an appropriate analysis of the challenge to Quebec's measures as well as Quebec's defence.

[24] Saskatchewan notes and agrees with Manitoba's observations concerning judicial economy and the importance of confining this review to matters which genuinely affect the Panel's recommendations, rather than engaging in a review of findings and conclusions. Saskatchewan refutes Quebec's allegations of error to the degree this may be necessary, but urges the Appellate Panel to refuse to answer challenges that are ultimately moot or improperly raised for the first time on appeal.

[25] Saskatchewan submits that the objective of the AIT, expressed in Article 100, is an important interpretive principle that must always guide the construction of the Agreement:

> It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.

[26] This principle should be kept in mind by the Appellate Panel when invited to overturn interpretations of the Panel. Quebec has requested findings of error based on idiosyncratic interpretations of the AIT, particularly those involving the importation of "standards" it identifies from international agreements. Quebec is inviting an interpretation of the AIT that does not enhance trade and mobility within Canada.

C. First Ground – Scope and Coverage of Chapter Nine

[27] Saskatchewan submits that this ground of appeal as described in paragraphs 5 through 7 of Quebec's written submissions is theoretical, representing only a pedantic point without any consequence.

[28] The statement of the Panel quoted by Quebec was an observation simply contrasting the prior scope of Chapter 9 (wherein only certain identified technical measures were included) and the current scope (wherein all technical measures are included). The Panel was not making an observation that required an additional and obvious distinction between technical and non-technical measures.

[29] Nowhere does Quebec argue that any of the measures in question are not technical measures within the meaning of Chapter Nine. It is furthermore clear that throughout its decision, the Panel was perfectly alive to the fact that it was dealing with technical measures, and explicitly so. Page 23 of the Report reveals this.

D. Second Ground – Article 402

[30] Article 402 of the AIT states:

> Subject to Article 404, no Party shall adopt or maintain any measure that restricts or prevents the movement of persons, goods, services or investments across provincial boundaries.

[31] Saskatchewan submits that the conclusions of the majority of the Panel on this point represent a reasonable interpretation of the AIT, particularly so as it accords with the majority of other AIT dispute panels that have had occasion to address the question. As noted by the Panel, AIT panels have interpreted Article 402 differently.

[32] The "narrow" view, adopted by the *Québec – Coloured Margarine* panel (p. 25), restricted the application of Article 402 to *transit* across the province in question.

[Quebec Appellate Submissions, Annex 2]

[33] The "broad" view, adopted not only by the Panel, but also by three previous AIT panels, is that Article 402 applies more generally to the "entry" of goods into the provincial market, as well as to the transit of goods and to export restrictions. As per the *Ontario – Dairy Analogues II* panel (p. 19):

> In the Summary Panel's view, Article 402 could apply to any and all of the following situations:
>
> - restrictions on entry of a good or service into a province;
> - restrictions on a product leaving a province (e.g., prohibition against the export of a raw material from a province);
> - restrictions on transit of a good across a province.
>
> The Summary Panel agrees with the majority of other Panels that the meaning of Article 402 includes a restriction on entry of a good into a province.
>
> **[Quebec Appellate Submissions, Annex 7]**

[34] The "broad" approach is not, as Quebec contends, meaningless in light of Articles 401 and 403. The narrow approach would not protect the AIT Parties from a situation where a Party *indiscriminately* prohibits certain goods or categories of goods from the province. For example, if Québec were to ban the sales of *all* margarine and butter within the province, Article 401 would not apply. Article 402 would apply whether or not the prohibition on sale and manufacture is discriminatory.

[35] The Measures operate to prohibit the entry into the Québec market of a number of established Dairy Alternatives and any new Dairy Alternatives. The Panel reasonably and correctly found that the measures in question violated Article 402 of the AIT.

[36] The Measures, by restricting the *manufacture* of Dairy Alternatives without regard to the fact that the goods may be sold outside of Quebec, also act as a barrier to *export*, which is properly characterized as a breach of both the narrow and broad interpretations of Article 402.

[37] This is what was argued before the Panel. The Panel, because of its broad interpretation of Article 402, did not need to address how a narrow interpretation might apply to the measures. Thus, should this Appeal Panel find that the interpretation of the Panel majority is an error of law, Saskatchewan would then urge the Appeal Panel to consider the necessity of applying the analysis to Saskatchewan's argument regarding the narrow interpretation.

[38] Regardless of whether the broad or narrow approach is to be preferred, Saskatchewan submits that, as Manitoba argues, the question is not fit for appeal as the Panel's Article 402 analysis dealt only with sections 7.1 and 7.2 of Quebec's *Food Products Act*. There is no need to rule on Article 402 unless this Appellate Panel finds that there is an error with respect to the application of Articles 401 and 403 to these measures, and it would be inappropriate to do so.

E. Third Ground – International Agreements

[39] The Panel carefully considered the arguments of Quebec with respect to its attempt to justify its discriminatory treatment of Dairy Alternatives and Dairy Blends by referring to certain international agreements. Saskatchewan submits that the Panel's analysis and conclusions were both reasonable and correct.

[40] Annex 405.1 guides the Parties in their efforts to develop standards and standards-related measures. A careful review of the entire Annex reveals that its intent is to promote harmonization and co-operation between the Parties as they develop their standards. Paragraph 17 encourages the Parties to base their efforts towards harmonization on, in the first place, National Standards, or, alternatively, *de facto*, National Standards, or, in the final alternative, international standards.

[41] The wish to rely on international standards as a justification appears to underpin Quebec's main contention in the dispute. Quebec prefers international standards (at least those that seem to allow for discriminatory treatment against certain food products) to National

Standards or *de facto* National Standards which allow for reasonable competition between dairy products and dairy analogues and dairy blends.

[42] The Panel reasonably and correctly concluded, on page 21 of the Report, that "consistency with a 'standard', international or otherwise, within the meaning of paragraph 17 of Annex 405.1 cannot, *per se*, deem a provision to be permissible or compliant with the obligations set out in the AIT."

[43] Saskatchewan submits that the Panel was reasonable and correct to conclude that Article 405.1 of the AIT does not relieve parties of their obligations under Chapter Four or Chapter Nine of the AIT.

[44] Saskatchewan refers this Appellate Panel to the Saskatchewan reply submissions dated November 15th, 2013, beginning at paragraph 14 for a proper interpretation of Article 405 and Annex 405.1 in this context.

[45] Whether or not labelling measures are "standards" within the meaning of Article 405(1) and Annex 405.1 (a question raised by Saskatchewan but not addressed by the Panel), these AIT provisions do not "permit" or otherwise justify the labelling Measures or any other "standards". The purpose and application of Article 405(1) and Annex 405.1 are not intended to defend or immunize measures which are otherwise non-compliant with the AIT. This was the reasonable and correct conclusion of the Panel.

[46] The existence of an international agreement or particular compositional standard is a factor that, in particular cases, an AIT dispute resolution panel might take into account when making a variety of determinations. Article 405(1) and Annex 405.1 do not somehow elevate external standards or third-party documents to defenses to an AIT claim. The purpose of Article 405(1) and the associated Annex are to encourage harmonization, not to provide defenses to breaches of the AIT.

[47] Article 405(1) contains a critical predicate clause: "In order to provide for the free movement of persons, goods, services, and investments within Canada" the Parties undertook to reconcile their standards *via* the Annex. This is an important qualifier—the "reconciliation" of standards must have the goal of "free movement" of goods in mind. Saskatchewan submits that Article 405(1) does not sanitize measures which would otherwise be non-compliant with Chapter Four (or Nine) of the AIT. Article 405(1) and

Annex 405.1 guide the harmonization or reconciliation process between the AIT Parties, but no more. Article 405(1) is an obligation on the AIT Parties to "reconcile" their standards-related measures; if anything, it places an obligation on Quebec to bring its standards into line with other AIT Parties' regulatory frameworks. Article 405(1) does not *permit* a course of action or measure which does not serve the "free movement" of goods.

[48] Article 405(1) is plainly not intended as a defense to a claim under the other obligations in Chapter Four or more specific obligations in Division IV of the AIT (*i.e.* Chapter Nine). It would strain the text of Article 405(1) to the breaking point to suggest that the Article, through the Annex, provides to a Measure a defense from scrutiny under Articles 401, 402, and 403. Likewise, it does not provide an expansion of the Article 404 test for legitimate objectives. Article 405(1) and the associated Annex were totally irrelevant to the matter before the Panel.

[49] Quebec asserts that Article 405(1) somehow justifies or immunizes the measures. There is no legal test under the AIT that reflects a "permissibility" carve-out in the manner suggested by Quebec—a measure is either inconsistent with Articles 401, 402, and 403 or it is not, and thereafter justified under Article 404 or not. The Quebec approach, which is to point to the harmonization requirement in Article 405(1) and the text of Annex 405.1(17) as a novel category of "permitted" measures under the AIT, was properly rejected by the Panel.

[50] Chapter Four of the AIT is clear, analytically: first, it must be asked whether the Measures in question are contrary to 401, 402, or 403 and, if so, whether they can be justified by Article 404. Article 405 does not intervene in this analytical approach to inconsistencies or legitimate objectives. Certainly, no previous dispute resolution panel has interpreted Article 405(1) in the manner suggested by Quebec. Article 405(1) does not make otherwise AIT-inconsistent measures somehow consistent with the AIT, or enlarge the definition of "legitimate objectives" or the application of the "legitimate objectives" test.

[51] Quebec's Measures do not have the effect of harmonizing trade across the AIT Parties. Quebec has failed to demonstrate anything approaching a regulatory consensus in Canada that would reflect the obstacles it has imposed. As noted, the introductory text to Article 405(1) sets out the purpose of the harmonization commitment in that Article. To allow Quebec to refer to a single international document and maintain a measure that is contrary to Chapters Four and Nine flies in the face of the "reconciliation" goal of Article 405(1). It is

absurd for Quebec to claim to be "reconciling" its labelling measures without pointing to a significant number of AIT Parties that maintain the same or even similar measures.

[52] Annex 405.1(17) notes that international standards can be used for harmonization purposes only "where appropriate." Where no other AIT Party has adopted the international standard, the "appropriateness" of relying on that standard should be in jeopardy.

[53] The fact that the Measures purport to be consistent with a single international Agreement does not relieve Quebec of its obligations under Articles 401, 402, and 403 of the AIT. The question of whether the labelling measures should *also* be harmonized between the AIT Parties is not a question that presented itself to the Panel in the within dispute.

[54] Saskatchewan submits the analysis and conclusions of the Panel respecting Article 404 are therefore both reasonable and correct. It would make no ultimate difference which international agreement was invoked or how it compared to Quebec's measures.

[55] Should the Appellate Panel be inclined to find that the existence of an international standard could relieve Quebec of its obligations under articles 401, 402 and 403 (a possibility which Saskatchewan disputes, and which Saskatchewan says the Panel correctly rejected), Saskatchewan urges the Appellate Panel to consider Saskatchewan's supplementary submissions of November 15, 2013 regarding the proper interpretation of the *Codex Alimentarius*.

[56] Much of Quebec's ground of appeal in this context amounts to a complaint that the Panel chose not to be guided by rules of interpretation that might have led to a conclusion that was favourable to Quebec. The Panel considered Quebec's arguments related to international standards and reasonably and correctly rejected their relevance. Having found that there was no role for the Annex to justify a breach of the AIT, the Panel appropriately did not engage in a detailed analysis of complex international agreements.

F. Fourth Ground – Section 4.1 of the *Food Products Act*

[57] Quebec argues that the Panel erred in law or refused to exercise its discretion in finding inconsistencies between Quebec's labelling measures and its AIT commitments. Quebec

alleges that the Panel found inconsistencies both with Article 403 and Article 905. In fact, the Panel found an inconsistency only with Article 403; and went on to find that neither Article 404 nor 905 availed Quebec. For this reason, Part 4.2 of Quebec's Submissions to this Appellate Panel should be rejected.

[58] The Panel properly found that Article 905 is related to Quebec's potential justification of an inconsistent measure (where Quebec is required to establish a legitimate objective and a measured approach to such an objective). The Panel correctly identified that in this context, Rule 11, and not Rule 10 of the AIT Rules of Interpretation (Annex 1813) applied. Quebec seems to confuse the inclusion of the citation of Article 905 in section c. of the Panel's Summary of Findings (page 26) with its actual analysis which precedes it (pages 22 through 25).

[59] Saskatchewan submits that the remaining Ground of Appeal, related to Quebec's labelling measure's inconsistency with Article 403, is not established. The Panel gave a reasonable and correct analysis and conclusion concerning what the Panel found was a clear obstacle to trade within the meaning of Article 403. The Panel, it is submitted, is not required to refute expressly each detail of Quebec's argument. In this, as in other areas, the Panel provided satisfactory reasons as required by Article 1706(3).

[60] Saskatchewan notes that Quebec goes to some lengths to re-argue its case on pages 24 to 28 of its Appeal submissions. Saskatchewan submits that its argument, as set out in Saskatchewan's original August 8, 2013 submissions, related to Quebec's labelling provisions, are correct and persuaded the Panel to reasonably arrive at the conclusions it expressed.

[61] Saskatchewan points out that, should this Appellate Panel find that the Panel committed an error of law with respect to its conclusions regarding Quebec's labelling measures' consistency with Article 403, then it would then become necessary to perform an analysis of the other AIT articles Saskatchewan raised.

G. Fifth Ground of Appeal – Legitimate Objectives

[62] Quebec claims that the Panel erred by failing to provide conclusions and reasons in relation to each of the necessary requirements, under Article 404. Saskatchewan submits there is nothing to this contention and that the practice of dispute resolution panels in not engaging in unnecessary determinations is a reasonable and appropriate approach toward judicial economy. Each of the conditions listed in Article 404 is necessary for a justification to be found. It is enough that the Panel found at least one condition was lacking. The crucial point found by the Panel was that Quebec failed to provide any necessary evidence to meet the evidentiary burden of Article 404, regardless of whether it had a genuine consumer protection objective primarily in mind. This was a reasonable and correct conclusion.

[63] This principle of judicial economy works similarly in WTO disputes. This was made clear by the World Trade Organization Appellate Body in *US – Wool Shirts and Blouses* at pages 18 to 20.

WT/DS33/AB/R (April 25, 1997) **[TAB J]**

[64] This was the same approach reasonably taken by the panel in Alberta's dispute with Quebec in *re: the Sale of Coloured Margarine, supra*, in Part 5.7 of its analysis, at page 30.

[Quebec Appellate Submissions, Annex 2]

[65] Saskatchewan provided overwhelming evidence, both from the relevant statements made in the Quebec legislature as to the true intent behind the measures in question, as well as the findings of the Quebec Court of Appeal as to the genuine purpose of the measures. The purpose of the measures was protection of the Dairy Industry against its competition. The Panel reasonably found that Quebec failed to meet its burden of proof under Article 404, regardless of whether it truly was motivated by a legitimate objective.

[66] Saskatchewan submits that if this Appellate Panel is inclined to find that each of the Article 404 conditions must be reviewed in order to reject an Article 404 defence (a conclusion which Saskatchewan refutes), then it would be necessary to consider Saskatchewan's evidence on the question of Article 404(a) as well as the other Article 404 requirements.

H. Sixth Ground of Appeal – Article 905

[67] The Panel gave a thorough and reasonable analysis of Article 905 which Saskatchewan also submits was correct.

[68] Saskatchewan submits that the interpretation that Quebec urges upon this Appellate Panel is unreasonable and certainly does not serve to reverse any burden of proof.

[69] Saskatchewan notes and adopts the position and reasoning of Alberta's and British Columbia's Appellate Submissions on this question.

I. Seventh Ground of Appeal – Interim Recommendation

[70] Saskatchewan notes and adopts the position and reasoning of Manitoba's Appellate Submissions on this question.

J. Eighth and Alternative Ground of Appeal

[71] Quebec invites the Appellate Panel to find that, if Quebec's labelling measures are in fact inconsistent with its AIT commitments, the measures are nonetheless justified under Article 404 of the AIT, contrary to the findings of the Panel.

[72] Saskatchewan submits that the Panel reasonably and correctly found that Quebec failed to demonstrate that its labelling measures, an obstacle to internal trade, were justified pursuant to the requirements of Articles 404 and 905.

[73] With respect to paragraph 114 of Quebec's June 13, 2014 submissions, Saskatchewan submits that the observations of Alberta and British Columbia representatives quoted in *Ontario – Dairy Analogues II* concerning labelling do not assist with the justification of Quebec's measures. The comments made do not begin to justify the lengths to which Quebec has gone in imposing the obstacle to trade.

[Quebec Appellate Submissions, Annex 7]

[74] The Panel reasonably and correctly found that Article 404 requires sufficient evidence from Quebec to demonstrate that the measure in question is properly fitted to impede trade as

little as possible to meet its legitimate objective. The Panel reasonably and correctly found that Quebec failed to meet this burden.

4. Relief Requested

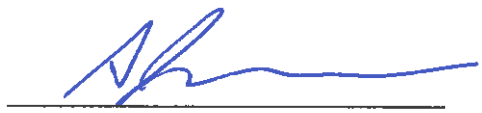
[75] Pursuant to Article 1706.1(4)(a), Saskatchewan requests this Appellate Panel to confirm the Report of the Panel in whole.

[76] Pursuant to Article 1706.1(4)(b), Saskatchewan requests this Appellate Panel to apportion operational costs with a view to discouraging non-meritorious appeals in accordance with Rules 47.2 and 47.3.

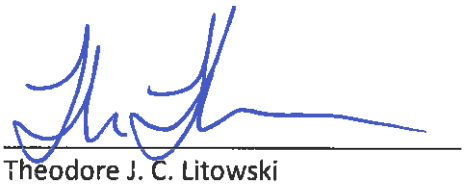
[77] Pursuant to Article 1706.1(4)(b), Saskatchewan requests this Appellate Panel to award Saskatchewan's Tariff Costs with a view to discouraging non-meritorious appeals in accordance with Rules 48.2 and 48.3.

[78] With respect to further submissions that this Appellate Panel may allow pursuant to Rule 29 of Annex 1705(1), Saskatchewan submits that permission for Quebec to add further written submissions ought to be granted only in circumstances where the counter-submissions filed pursuant to Rule 28 raise new issues that Quebec could not have reasonably anticipated in preparing its submission pursuant to Rule 27.

All of which is respectfully submitted this 18th day of August, 2014.



Alan Jacobson
Senior Crown Counsel
Ministry of Justice and Attorney General
Government of Saskatchewan



Theodore J. C. Litowski
Crown Counsel
Ministry of Justice and Attorney General
Government of Saskatchewan

List of Tabs