

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES (“ICSID”) ARBITRATION (ADDITIONAL FACILITY) RULES**

BETWEEN:

**MERCER INTERNATIONAL INC.**

**Claimant**

AND

**CANADA**

**Respondent**

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**PROCEDURAL ORDER NO. 1**

**ICSID Case No. ARB(AF)/12/3**

**24 January 2013**

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**TRIBUNAL:**

**Mr. V.V. Veeder (President)  
Professor Francisco Orrego Vicuña  
Professor Zachary Douglas**

## **I. THE TRIBUNAL AND ADMINISTRATIVE AUTHORITY**

### **A. Constitution of the Tribunal**

(Article 1125 of the NAFTA, Article 13 of the ICSID Arbitration (AF) Rules)

1. Mercer International Inc. and Canada (“disputing parties”) agree and confirm that the Tribunal has been duly constituted in accordance with Article 1125 of the NAFTA.
2. The disputing parties confirm that they waive any possible objection to the constitution of the Tribunal and to the appointment of each Member of the Tribunal on the grounds of conflict of interest and/or lack of independence or impartiality or any other ground in respect of matters known to them, or which reasonably should have been known to them based on available information, at the date of signature of this Procedural Order.
3. Declarations of the Members of the Tribunal as to their independence and impartiality have been provided to the disputing parties in the form required by Article 13 of the ICSID Arbitration (AF) Rules.

### **B. Contact Details of Tribunal**

4. Contact details of each Member of the Tribunal are as follows:

**Mr. V.V. Veeder**  
24 Lincoln’s Inn Fields  
London WC2A 3EG  
United Kingdom  
Tel: + 44 (0)20 7813 8000  
Fax: + 44 (0)20 7813 2024  
vvveeder@londonarbitrators.net

**Professor Franciso Orrego Vicuña**  
Avenida El Golf No. 40. Piso 6  
Santiago 755-0107  
Chile  
Tel: (56-2) 441.6300 or 6326  
Fax: (56-2) 441.6399  
forrego@uchile.cl

**Professor Zachary Douglas**  
Graduate Institute of International and  
Development Studies  
Case Postal 136  
1211 Genève 21  
Switzerland  
Tel: +41.229085828  
zacharydouglas@matrixlaw.co.uk

5. All correspondence and documents for the Tribunal in this arbitration will be delivered to the above addresses.

### **C. CASE ADMINISTRATION**

6. ICSID shall administer the arbitral proceedings and will provide registry services and administrative support. The cost of ICSID's services will be calculated in accordance with ICSID's *Schedule of Fees* and shall be included in the costs of the arbitration.

7. Contact details of the Secretary of the Tribunal designated by ICSID further to the disputing parties' request are as follows:

Ms. Alicia Martín Blanco  
International Centre for Settlement of Investment Disputes  
1818 H Street N.W.  
Washington, D.C. 20433  
U.S.A.  
Tel: 202.473.9105  
Fax: 202.522.2615  
Email: amartinblanco@worldbank.org

8. All correspondence and documents for ICSID in this arbitration will be delivered to the above address.

## **II. THE DISPUTING PARTIES AND THEIR REPRESENTATIVES**

9. Each disputing party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such intended, designation, subject to the approval of the Tribunal.

10. Mercer International Inc. ("Claimant") is represented by:

Mr. Michael T. Shor  
Ms. Jean Kalicki  
Mr. Patricio Grané

Arnold & Porter LLP  
555 12th Street, NW  
Washington, D.C. 20004-1206  
U.S.A.  
Tel.: 202.942.5000  
Fax.: 202.942.5999  
Email: michael.shor@aporter.com  
jean.kalicki@aporter.com  
patricio.grane@aporter.com

and

Mr. Kim Moller  
Sangra Moller LLP  
1000 Cathedral Place  
925 West Georgia Street

Vancouver, British Columbia  
Canada V6C 3L2  
Tel: 604.662.8808  
Fax: 604.669.8803  
Email: kmoller@sangramoller.com

11. All correspondence and documents for the Claimant in this arbitration will be delivered to the above addresses and to Mercer@aporter.com.

12. Canada (“Respondent”) is represented by:

Ms. Sylvie Tabet  
Mr. Michael Owen  
Mr. Nick Gallus  
Mr. Stephen Kurelek  
Ms. Marie-Claude Boisvert  
Mr. Pierre-Olivier Savoie

Trade Law Bureau (JLTB)  
Department of Foreign Affairs and  
International Trade Canada  
Lester B. Pearson Building  
125 Sussex Drive  
Ottawa, Ontario KIA 0G2  
CANADA  
Tel: 613.944.1590  
Fax: 613.944.0027  
Email: sylvie.tabet@international.gc.ca  
michael.owen@international.gc.ca  
pierre-olivier.savoie@international.gc.ca  
nick.gallus@international.gc.ca  
stephen.kurelek@international.gc.ca  
marie-claude.boisvert@international.gc.ca

13. All correspondence and documents for the Respondent in this arbitration will be delivered to the above addresses.

### **III. FEES AND PAYMENTS**

#### **A. Fees and Expenses**

(Article 58 of the ICSID Arbitration (AF) Rules and the *ICSID Schedule of Fees*)

14. Each member of the Tribunal shall receive:

- (a) a fee of US \$3,000 or such other fee as may be set forth from time to time in the *ICSID Schedule of Fees* for each day of participation in meetings of

the Tribunal or 8 hours of other work performed in connection with the proceeding or *pro rata*; and

- (b) subsistence allowance and reimbursement of travel and other expenses within the limits set forth in Regulation 14 of the *ICSID Administrative and Financial Regulations* and the *Memorandum on the Fees and Expenses of ICSID Arbitrators*.

The fees and expenses of the Members of the Tribunal shall be stated separately in its award.

**B. Apportionment of Costs and Advance Payments**  
(Article 58 of the ICSID Arbitration (AF) Rules)

15. Without prejudice to the final decision of the Tribunal regarding costs pursuant to Article 58 of the ICSID Arbitration (AF) Rules, the disputing parties agree to share equally advance payments for the fees and costs of the Tribunal and ICSID.

16. By letter of October 22, 2012, ICSID requested that each disputing party pay US \$ 125,000 to defray the initial costs of the proceeding to be paid by November 21, 2012. The Centre received Claimant's payment of US\$ 125,000 on 21 November 2012, and Respondent's payment of US\$ 125,000 on 28 November 2012.

17. ICSID will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the disputing parties to make supplementary deposits in accordance with Regulation 14 of the *ICSID Administrative and Financial Regulations*.

18. Upon request, ICSID shall provide a detailed statement of account with respect to the deposit.

19. The unused balance held on deposit at the end of the arbitration shall be returned to the disputing parties in proportion to the amounts advanced by each party to the Centre and notwithstanding the Tribunal's final decision on costs.

20. ICSID will administer the deposit free of charge, but any transfer fees or other bank charges will be charged to the account.

**IV. APPLICABLE LAW AND ARBITRATION RULES**

(Articles 1120 and 1131 of the NAFTA; Articles 1 and 54 of the ICSID Arbitration (AF) Rules)

21. The governing law for this arbitration is the NAFTA and applicable rules of international law.

22. In accordance with NAFTA Article 1120 (2), the applicable arbitration rules are the ICSID Additional Facility Rules, except to the extent that they are modified by Section B of NAFTA Chapter Eleven.

## **V. PLACE OF ARBITRATION AND LOCATION OF HEARINGS**

(Article 1130 of the NAFTA; Articles 19 and 20 of the ICSID Arbitration (AF) Rules)

23. The place of arbitration is the city of Toronto, Ontario.

24. The Tribunal will hold the hearings at ICSID in Washington, D.C., unless the Tribunal and the disputing parties agree to hold the hearings at any other place. In case of emergency, the Tribunal may hold meetings or hearings by telephone or videoconference after consultation with the disputing parties.

25. The Tribunal may deliberate at any convenient location, without consultation with the disputing parties, including by video or telephone conference.

## **VI. WRITTEN AND ORAL PROCEDURES**

### **A. Procedural Language and Translation**

(Article 30 of the ICSID Arbitration (AF) Rules)

26. The arbitration shall be conducted in English.

27. All documentary evidence in a language other than English shall be translated to English by the disputing party submitting that evidence at its own cost. Translation of documents into English need not be certified. However, if a dispute arises as to the accuracy of a translation, the matter shall be decided by the Tribunal. Witness testimony in a language other than English shall be translated simultaneously to English, the cost of which shall be borne [initially] by the disputing party calling that witness.

### **B. Confidentiality**

(Article 39(2) of the ICSID Arbitration (AF) Rules)

28. The Tribunal's Confidentiality Order of 24 January 2013 applies to these proceedings.

29. Section I (Access to Documents) of the Note of Interpretation of the NAFTA Free Trade Commission, issued July 31, 2001, applies to the treatment of documents in these arbitral proceedings.

### **C. Pleadings**

(Articles 33, 36-39 of the ICSID Arbitration (AF) Rules)

30. The disputing parties shall set out in the Memorial and Counter-Memorial their full case, which will be accompanied by all witness statement(s), expert report(s), document(s) and/or other evidence, and legal authorities, on which the disputing parties rely. The disputing parties shall limit the Claimant's Reply and the Respondent's

Rejoinder to a response to the arguments and evidence set out in the Respondent's Counter-Memorial and the Claimant's Reply, respectively.

**D. Service of Documents**

(Articles 31-32 of the ICSID Arbitration (AF) Rules)

31. The disputing parties shall send correspondence or other written communications to the Tribunal by email, simultaneously copied to the Secretary of the Tribunal and counsel for the other disputing party. The Tribunal and the Secretary of the Tribunal shall not be copied on direct communications between the disputing parties.

32. The disputing parties shall send, by the relevant filing date, all pleadings and submissions to the Tribunal, by email, simultaneously copied to the Secretary of the Tribunal and counsel for the other disputing party. In addition, on the relevant filing date, the disputing parties shall upload these documents, and the accompanying exhibits, witness statements and expert reports and legal authorities, to an FTP site hosted by ICSID specifically created for submissions; only counsel to the disputing parties, the Tribunal and the Secretariat shall have access to the FTP site. The documents uploaded on the FTP site shall remain available for a period of 60 days.

33. In addition to the electronic service of documents, the disputing parties shall send to the Secretary of the Tribunal four (5) hard copies in A5 format of their pleadings, witness statements and expert reports, by courier, within three business days of the relevant filing date. (The signed originals of any witness statement and expert report shall be submitted within seven (7) days after the filing date.) The disputing parties shall also send hard copies of all supporting exhibits to the Tribunal in letter format (8.5 x11 inches), by the same means, within the same timeframe. (Legal authorities shall be submitted in electronic version only.) The Tribunal Members may also request at their discretion that each disputing party provide a USB drive containing electronic copies of the pleadings or submissions filed with ICSID, including any accompanying witness statements, expert reports, exhibits and legal authorities.

34. The disputing parties may send hard copies of correspondence, including motions, to the Tribunal in letter format (8.5 x11 inches).

35. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Alicia Martín Blanco  
ICSID  
MSN U3-301  
3301 Pennsy Dr.  
Landover, MD 20785-1606  
U.S.A  
Tel: 202.473.9105  
Fax: 202.522.2615  
Email: amartinblanco@worldbank.org

36. For local messenger deliveries, the contact details are:

Ms. Alicia Martín Blanco  
1800 G Street, NW (“U Building”)  
3rd Floor  
Washington, D.C. 20006  
USA  
Tel.: 202.473.9105

37. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Centre.

38. A filing shall be deemed timely if sent by a party by midnight (Eastern Standard Time) on the relevant date.

#### **E. Motions Procedure**

39. A disputing party shall normally request leave from the Tribunal before filing a motion. The other party may respond to such a motion within 5 days. If the Tribunal grants leave to file the motion, it shall provide directions to the disputing parties for the submission of a reply and, if necessary, rejoinders to the motion. However, the disputing parties are not required to seek leave before making minor procedural requests (e.g., requests for extension of time limits or similar requests, the contents of which are unlikely to cause prejudice to the other disputing party) or when filing a motion with the consent of the other disputing party.

#### **F. Evidence**

(Articles 40-41 of the ICSID Arbitration (AF) Rules)

40. Subject to the Confidentiality Order, the disputing parties agree that the *International Bar Association’s Rules on the Taking of Evidence (2010)* (“IBA Rules”) shall serve as guidelines on:

- (a) the definition of documents (Definitions of the IBA Rules);
- (b) the exchange of documents (Article 3 of the IBA Rules, excepting Article 3.13, concerning confidentiality);
- (c) the presentation of evidence by fact and expert witnesses (Articles 4, 5, and 6 of the IBA Rules);
- (d) on-site inspection (Article 7 of the IBA Rules);
- (e) the conduct of the evidentiary hearing (Article 8 of the IBA Rules); and
- (f) the admissibility and assessment of evidence (Article 9 of the IBA Rules).



41. The disputing parties shall include with their written submissions the evidence on which they rely for their legal arguments, including signed witness statements, signed expert reports, and all other evidence in whatever form.

42. The Tribunal shall not receive any documentary or other evidence that has not been introduced in writing and attached to the Memorial, the Counter-Memorial, the Reply or the Rejoinder, unless the Tribunal determines that exceptional circumstances are present that require the admission of the additional evidence. A disputing party that considers that such exceptional circumstances are present shall request leave from the Tribunal to introduce the evidence. The requesting party shall not introduce such evidence prior to obtaining express authorization from the Tribunal.

43. The witness statements, expert reports, or other evidence attached to the Reply, the Rejoinder or other responsive pleadings shall be limited to responding to or rebutting the previous submissions of the other disputing party.

#### **G. Document Disclosure**

44. The disputing parties have agreed to document disclosure prior to the filing of the first Memorial, in accordance with the Schedule of Proceedings in Part VIII.

45. The disputing parties shall file any document requests in the form of a table (commonly referred to as a “Redfern Schedule”), comprising five columns:

- (a) Documents Requested - identifying the specific documents or narrow and specific categories of documents that have been requested;
- (b) Justification – providing a detailed explanation of the relevance and materiality of the requested documents for each request;
- (c) Response – either indicating the disputing party’s agreement to disclose the requested document(s), and any limits on that disclosure, or the disputing party’s reasoned objections to the disclosure of the requested document(s);
- (d) Reply – providing a brief reply to the other disputing party’s response in respect of documents the disclosure of which is requested; and
- (e) Decision – stating the decision of the Tribunal on disputed requests.

46. A model Redfern Schedule is attached to this Procedural Order as Appendix A.

47. The requesting disputing party may refer any of its disputed document requests to the Tribunal for decision.

48. The Tribunal may order one disputing party to disclose to the other disputing party the disputed document(s) or limited categories of disputed documents. In the exercise of its discretion, the Tribunal shall consider:

- (a) the specificity of the request;
- (b) the relevance and materiality of the requested documents;
- (c) the burden of producing the documents on the disputing party from whom they are requested;
- (d) the legitimate interest of the opposing disputing party, including any applicable privileges and/or grounds of political and institutional sensitivity;
- (e) the public availability and accessibility of the requested documents; and
- (f) any other factors the Tribunal reasonably considers appropriate to apply under the circumstances.

49. The disclosure of documents under this Part shall be made electronically through an FTP secure site which can be accessed by counsel to the disputing parties, in PDF format or some other similar format to which the disputing parties may later agree. Each disputing party shall provide the other disputing party, on the date of the production, with an index of the documents that it is producing.

50. Correspondence or documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this Procedural Order.

51. Where a disputing party receives a document or documents from the other disputing party which it reasonably believes may be protected by privilege or protected on the grounds of special political or institutional sensitivity, it shall promptly inform the disclosing disputing party of the disclosure of the document(s), and seek confirmation that such disclosure was intentional. If the disclosing disputing party declares that the disclosure was not intentional, the documents shall be promptly returned to the disclosing disputing party. However, the return of such documents is without prejudice to the right of the receiving disputing party to claim that the disclosure resulted in a waiver of the applicable protection.

52. Where documents are protected by privilege or protected on the grounds of special political or institutional sensitivity, their disclosure does not operate as a waiver, and they must be promptly returned to the disclosing disputing party, if:

- (a) the disclosure is inadvertent;
- (b) the disclosing disputing party took reasonable steps to prevent disclosure; and
- (c) the disclosing disputing party took reasonable steps to rectify the error no later than fourteen (14) days after it discovered or should have discovered the inadvertent disclosure.

53. The above paragraphs are without prejudice to any obligations under applicable domestic law, professional or otherwise, that a disputing party or its counsel may have with respect to documents disclosed to it by the other disputing party which it reasonably believes may be protected by privilege or protected on the grounds of special political or institutional sensitivity.

54. The disputing parties may also make a limited number of narrow and specific document requests, in the form of a supplemental Redfern Schedule, within 20 days of the filing of the Memorial or Counter-Memorial for documents relating to specific claims, defenses, or factual assertions made by the other disputing party in these submissions that it did not anticipate. If the other disputing party objects to such a request or fails to produce the requested documents within 20 days from the time it receives the request, the disputing party requesting the documents may refer the request to the Tribunal for decision. The Tribunal in deciding these supplemental requests shall consider whether these requests are narrow and specific and not unduly burdensome. The Tribunal shall also endeavour to issue its decision on any disputed supplemental request within 5 days. If the Tribunal determines that documents should be produced in response to a disputed supplemental request, it shall direct that these documents be produced within a period of 20 days. However, in circumstances where complying with such direction would cause an undue burden on the disputing party producing these documents, the Tribunal may extend the timeframe for the supplemental production. If the Tribunal extends the timeframe for the supplemental production, it shall likewise extend the filing of the Reply and the Rejoinder.

#### **H. Documentary Evidence**

(Article 41 of the ICSID Arbitration (AF) Rules)

55. Documents disclosed in response to Requests for Documents or any order of the Tribunal shall not be considered in evidence unless and until a disputing party submits them in evidence in accordance with this Procedural Order.

56. Any documents submitted in evidence in these proceedings shall be presented in the following form:

- (a) Exhibits shall be bound separately, each exhibit having a divider bearing on the tab the exhibit's identification number;
- (b) The exhibits shall be numbered consecutively;
- (c) The number of each exhibit containing a document submitted by the Claimant shall be preceded by the letter "C"; the number of each exhibit containing a document submitted by the Respondent shall be preceded by the letter "R";
- (d) Each bundle containing exhibits shall contain an index of exhibits, setting forth for each one: the exhibit number, its date, and a brief description of the exhibit; and

- (e) The index of exhibits shall be updated with each new submission of documents in these proceedings.

57. Documentary evidence submitted to the Tribunal, including evidence submitted in the form of copies, shall be deemed true and complete unless a disputing party disputes its authenticity or completeness. Copies of documents need not be certified, unless there is a challenge by the other disputing party and the Tribunal deems the certification necessary.

**I. Fact Witnesses**

(Articles 42-43 of the ICSID Arbitration (AF) Rules)

58. A disputing party may present witness evidence through any person, including a disputing party or its officers, employees or other representatives.

59. For each witness, a sworn or affirmed witness statement shall be submitted to the Tribunal.

60. Each witness statement shall state the witness' name, birth date, present address, involvement in or relation to the case, and the evidence the witness is offering, including, if applicable, an indication of the source for the witness' knowledge.

61. Any party may propose calling its own witness or expert, even if that witness or expert has not been called upon by the Tribunal or the other party. The Tribunal shall decide, based on such proposal, whether it allows such witness or expert to appear at the hearing.

62. When the other disputing party has waived cross-examination of a witness or expert, and the Tribunal does not direct or allow his or her appearance, the Tribunal may consider the witness statement of the witness.

63. The direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination, in accordance with paragraph 67(a) below.

64. Each disputing party shall advance the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award, pursuant to Article 58 of the ICSID Additional Facilities Rules.

65. If a witness fails to appear when first called to an evidentiary hearing, the Tribunal may call the witness to appear a second time if it is satisfied that there was a valid reason for the first failure to appear and that the testimony of the witness is relevant and material to the outcome of the case.

66. The Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when called to an evidentiary hearing, having regard to all the surrounding circumstances. The Tribunal shall disregard the written statement of any witness who does not provide a valid reason for failing to appear when called by

either the Tribunal or a disputing party for cross-examination, unless, in exceptional circumstances, the Tribunal decides otherwise.

67. At oral hearings, the examination of each witness shall proceed under the control of the President of the Tribunal as follows:

- (a) the disputing party summoning the witness may briefly examine the witness, only for the purposes of confirming that the witness affirms his or her prior written witness statement and/or allowing the witness to address new arguments or evidence introduced into the case since the time of the witness' last written witness statement;
- (b) the disputing party adverse in interest to the witness may then cross-examine the witness; the scope of the cross-examination shall be limited to the content of the witness' statement or to any other fact that is within the witness' personal knowledge, and is relevant and material to the issues in the case;
- (c) the disputing party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross-examination to be granted only with leave from the Tribunal; and
- (d) the Tribunal may examine the witness at any time, either before, during or after examination by one of the disputing parties.

68. It shall not be improper for counsel to meet witnesses and potential witnesses to establish facts, prepare the witness statements, and prepare the examinations.

69. The Tribunal shall decide the issue of the sequestration of fact witnesses prior to the hearing, in consultation with the disputing parties. In any event, the Tribunal shall apply any witness sequestration rule and exception thereto equally to party representatives of the Claimant and to officials from Crown corporations or from the Government of British Columbia.

70. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.

## **J. Expert Witnesses**

(Articles 42-43 of the ICSID Arbitration (AF) Rules)

71. Each disputing party may retain and submit the evidence of one or more experts to the Tribunal. The procedural rules set out above with respect to fact witnesses shall apply to the evidence of experts, as appropriate.

72. In addition, each expert witness report shall include a statement of the qualifications of the expert in the claimed area of expertise, and shall attach a current *curriculum vitae* evidencing such qualifications.

**K. Non-Disputing party Participation**

(Article 41(3) of the ICSID Arbitration (AF) Rules)

73. The disputing parties agree that the Tribunal shall consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on non-disputing party participation, issued on October 7, 2003.

**L. NAFTA Party Participation**

(NAFTA Article 1128)

74. Pursuant to NAFTA Article 1128, non-disputing NAFTA Parties are entitled to make submissions in this arbitration. Each disputing party shall be entitled to comment on any such Article 1128 submission, within a time frame to be fixed by the Tribunal.

**Record of Hearings**

(Article 28(g) of the ICSID Arbitration (AF) Rules)

75. The Tribunal shall be required to record hearings unless the disputing parties agree otherwise.

76. Hearings shall be open to the public. At the request of one of the disputing parties, the Tribunal shall hold *in camera* sessions to protect confidential or restricted access information as defined in the Tribunal's Confidentiality Order. Where proceedings are held *in camera*, the Tribunal shall make appropriate orders respecting witness exclusions from the hearings.

77. Oral hearings before the Tribunal shall be transcribed. The first session of the Tribunal with the disputing parties shall also be transcribed, but other procedural or organizational meetings with the Tribunal may be either transcribed or tape recorded. The proceedings shall not be recorded in any other way, and shall not be broadcast, unless the disputing parties jointly agree.

78. Live Note transcription software, or comparable software, will be used to make the hearing transcripts instantaneously available to the disputing parties and Members of the Tribunal in the hearing room. The disputing parties further agree that transcripts of proceedings should be made available on a same day service basis, except for one-day or procedural hearings which may have a slower transcription. Without prejudice to the final decision of the Tribunal regarding costs, ICSID shall administer the cost of transcription services.

79. The Tribunal shall establish, as necessary, procedures and schedules for the correction of transcripts. In the event of disagreement between the disputing parties on

corrections to transcripts, the Tribunal shall determine whether or not any such corrections are to be adopted.

80. The Secretary of the Tribunal and/or administrative assistant shall keep minutes of each preliminary or procedural conference in summary form, which shall be circulated to the disputing parties for review and comments prior to being submitted to the Tribunal.

#### **M. Conservation of the Record**

81. Counsel from the Ministry of Justice of the province of British Columbia may retain one complete copy of the record, including confidential information. All other confidential or restricted access information shall be returned or otherwise destroyed, within sixty (60) days of the conclusion of any set aside proceedings or after the time to request set aside proceedings under Article 1136 of NAFTA has expired.

### **VII. DECISIONS OF THE TRIBUNAL**

#### **A. Quorum and Replacement of Arbitrators**

(Articles 14 to 18, 28(1)(a) of the ICSID Arbitration (AF) Rules)

82. Subject to paragraph 83, the presence of all three members of the Tribunal shall constitute a quorum.

83. In exceptional circumstances, including cases of urgency, the presiding arbitrator may decide procedural or non-substantive matters alone. However, the presiding arbitrator shall attempt to consult the other members of the Tribunal whenever possible.

84. In the event of the death, incapacity or resignation of a member of the Tribunal, the proceedings shall be suspended until the vacancy has been filled. The replacement of any arbitrator shall be in accordance with Articles 14 to 18 of the ICSID Additional Facility Rules.

#### **B. Decisions of the Tribunal**

(Articles 24, 52 of the ICSID Arbitration (AF) Rules)

85. Subject to the above paragraphs, the Tribunal shall make any award or other decision by a majority of its members; abstention shall count as a negative vote. The Tribunal may take decisions by any means of communication, provided that all its Members are consulted and take part in the decision.

86. All awards and decisions shall be deemed to be made at the place of arbitration, regardless of where the award or decision is signed.

#### **C. Delegation of Power to Fix Time Limits**

(Article 33 of the ICSID Arbitration (AF) Rules)

87. The Tribunal shall, in consultation with the disputing parties, fix the time limits in respect of all documents to be filed. In case of urgency, the presiding arbitrator may fix a time limit or amend an existing limit.

### VIII. SCHEDULE OF PROCEEDINGS

88. The Schedule of Proceedings agreed to by the disputing parties is as follows.

<b>Action</b>	<b>Party</b>	<b>Date</b>
Notice of Intent to Submit a Claim to Arbitration.	Claimant	January 26, 2012
NAFTA Article 1118 Consultations.	Disputing parties	March 26, 2012
Request for Arbitration.	Claimant	April 30, 2012
Procedural Hearing.	Disputing parties & Tribunal	December 5, 2012
Exchange of requests to produce documents.	Disputing parties	February 4, 2013
Production of documents not the subject of objections / Exchange of objections to other disputing parties' document requests, if any.	Disputing parties	April 19, 2013
Exchange of replies to opposing parties' objections to produce documents, if any.	Disputing parties	May 13, 2013
Submission to the Tribunal of the disputing parties' remaining objections to production.	Disputing parties (Jointly)	May 31, 2013
Tribunal's Order on the production of documents.	Tribunal	Date F (June 21, 2013) (assuming that the Tribunal will issue an order within three weeks)
Production of documents ordered by the Tribunal	Disputing parties	F + 30 days = G (July 22, 2013)
Memorial with Witness Statement(s) and Expert Report(s). (Restricted Access, Confidential and Public Versions).	Claimant	G + 110 days = H (November 8, 2013)
Counter-Memorial with Witness Statement(s) and Expert Report(s). (Restricted Access, Confidential and Public Versions).	Respondent	H + 110 days = I (February 26, 2014)
Procedural Conference call (if necessary)	Tribunal &	I + 15 days =



	disputing parties	(March 13, 2014)
Reply with Witness Statement(s) and Expert Report(s). (Restricted Access, Confidential and Public Versions).	Claimant	I + 90 days = J (May 27, 2014)
Rejoinder with Witness Statement(s) & Expert Reply Report(s). (Restricted Access, Confidential and Public Versions).	Respondent	J + 90 days = K (August 25, 2014)
NAFTA Article 1128 Submissions.	Non-disputing NAFTA Parties	K + 30 days = L (September 24, 2014)
Disputing parties' Reply to Article 1128 Submissions, if any.	Disputing parties	L + 45 days = M (November 7, 2014)
Pre-Hearing Teleconference.	Disputing parties and Tribunal	N – 30 = (October 24, 2014)
Oral Hearing (10 effective days).	All parties & Tribunal	K + 77 = N (November 10-21, 2014)
Award.	Tribunal	TBD

89. The Tribunal may amend this Schedule for good cause, following consultation with the disputing parties, and shall decide the date of any additional meetings or hearings in consultation with the disputing parties. To the extent that any date below occurs on a non-business day, a holiday in Canada or in the United States, the disputing party will file the appropriate submission on the next business day. Each time such a scheduling shift occurs, all subsequent dates in this schedule will be recalibrated accordingly.

90. Canada reserves the right to request a preliminary phase that goes to the jurisdiction of the tribunal no later than the date of the submission of its Counter-Memorial.

#### **IX. IX IMMUNITY FROM SUIT**

91. The Members of the Tribunal shall have immunity from suit consistent with the *lex loci arbitri* and any other applicable law (including, without limitation, immunity from any judicial process and liability).

92. After the award has been made and all possibilities for any interpretation, correction or supplemental decision have lapsed or been exhausted, no Member of the Tribunal shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration, save and to the extent required by any applicable law or court of competent jurisdiction.

**X. X OTHER MATTERS**

93. This Procedural Order is issued in the Place of Arbitration, on 24 January 2013. Upon consultation with the disputing parties and for good cause, the Tribunal may amend this Procedural Order at any time.

*Van Vech*

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Mr. V.V. Veeder

President

On behalf of the Tribunal

Date: *24 January 2013*

*Alicia Martín Blanco*

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Ms. Alicia Martín Blanco

Secretary of the Tribunal

Date: *1/18/2013*

## **APPENDIX A**

