

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc.

v.

Republic of Panama

(ICSID Case No. ARB/16/34)

PROCEDURAL ORDER No. 5

Members of the Tribunal

Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal
Mr. Horacio A. Grigera Naón, Arbitrator
Mr. J. Christopher Thomas, QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

30 January 2018

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I. PROCEDURAL HISTORY

1. Together with the issuance of the Decision on Expedited Objections of 13 December 2017, the Tribunal invited the Parties to confer with a view to proposing to the Tribunal a joint procedural calendar for the remainder of the proceeding, or to present the Tribunal with their individual positions if the Parties were unable to reach an agreement.
2. On 5 January 2018, the Parties filed a *joint* submission with a proposed procedural calendar for the remainder of the proceeding. The submission also identified certain areas of disagreement and set forth the Parties' respective positions on such areas.
3. On 8 January 2018, the Tribunal ruled as follows concerning the areas of disagreement:
 - “1. The Tribunal considers that, in the absence of ‘unforeseen and very material evidence’, being the phrase used by Ms Gehring Flores in submissions on 6 June 2017, any further application for bifurcation by Panama would be contrary to the spirit of the undertaking given by her at that time. Accordingly the Tribunal makes no order at this stage in relation to the possibility of bifurcation.
 2. The Tribunal approves and adopts the Timetable proposed by Panama, and largely agreed by Bridgestone, in relation to the Non-Bifurcated Scenario, save that the Rejoinder is to be delivered by 22 April 2019.
 3. The Tribunal provisionally directs that the hearing shall take place over a 5 day period in July 2019 and invites the parties to indicate their availability during that period by 19 January 2018.
 4. The decision whether or not to order pre-hearing skeletons will be taken at the pre-hearing organisational meeting.
 5. The Tribunal will incorporate these directions in a formal Procedural Order once the hearing date is determined.”
4. On 10 January 2018, the Respondent advised the Tribunal of the weeks during the month of July in which it was available, adding that “Respondent and its counsel understand that determination of the length of the hearing may be premature and should remain subject to future discussion after fuller framing of the issues through the filing of Claimants full Memorial on the merits and the Respondent’s response.”
5. On 16 January 2018, the Claimants advised the Tribunal of their availability throughout July 2019.

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6. The Tribunal issues the present Procedural Order to memorialize its prior ruling concerning the Procedural Calendar for the remainder of this proceeding, and to set forth the Hearing dates.

II. ORDER

7. The Tribunal confirms and incorporates in this Order the rulings made by letter dated 8 January 2018. The Procedural Calendar reflecting the Tribunal's rulings is incorporated as **Annex A** of this Order.
8. With regard to the Hearing date, in light of the Parties' communications of 10 and 16 January 2018, the Tribunal decides that the Hearing shall be scheduled from **Monday, 29 July to Friday, 2 August 2019**. In light of the observations received concerning the fluidity of the number of days needed, the Tribunal further directs that the weekend (**3-4 August 2019**) be also held in reserve as a precaution. The Parties are requested to advise the Tribunal no later 30 days following the Rejoinder (*i.e.* by 22 May 2019) whether the total number of days reserved (7) will be required.
9. The Tribunal observes that the Parties' proposed calendar did not contemplate an eventual "non-disputing Party" written submission by the United States of America ("U.S.") pursuant to Article 10.20.2 of the TPA. The Parties are invited to confer and jointly suggest to the Tribunal a proposed deadline for such submission to take place, should the U.S. decide to file one. The Parties are asked to revert to the Tribunal no later than **6 February 2018**. The Tribunal will subsequently notify the U.S. of such deadline, and of the dates established for the Hearing.

For and on behalf of the Tribunal,

_____[Signed]_____
Lord Nicholas Phillips Baron of Worth Matravers
President of the Tribunal

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Annex A – Timetable
Amendment No. 1: 30 January 2018¹

Procedural Calendar for the Expedited Objections Phase

Date	Lapse	Party / Tribunal	Description
30 May 2017		RESPONDENT	Expedited Objections
24 July 2017	55 days	CLAIMANTS	Response on Expedited Objections
7 August 2017	14 days	RESPONDENT	Reply on Expedited Objections
14 August 2017	7 days	CLAIMANTS	Rejoinder on Expedited Objections
18 August 2017	N/A	PRESIDENT AND THE PARTIES	Pre-Hearing Conference
21 August 2017	7 days	CLAIMANTS AND RESPONDENT	Finalization of Agreement on Index for Hearing Bundle
25 August 2017	4 days	CLAIMANTS AND RESPONDENT	Hearing Bundle Index Circulation
28 August 2017	N/A	NON- DISPUTING PARTY	U.S. Non-Disputing Party Submission pursuant to Article 10.20.2 of the TPA
3-6 September 2017	20 days (from Rejoinder)	ALL	Hearing on Expedited Objections

¹ This table reflects the current procedural calendar. It reflects the initial procedural calendar set forth in Procedural Order No. 1 of 11 July 2017, incorporating subsequent amendments resulting from (i) Tribunal’s letters of 4 and 10 August 2017; (ii) Tribunal’s letter of 14 August 2017; (iii) Procedural Order No. 3 of 29 August 2017; (iv) Tribunal’s directions at the conclusion of the Hearing on Expedited Objections (Rev. Hr. Tr. Day 4, 642:14 – 643:4); (v) Tribunal’s letter of 28 September 2017; (vi) the Tribunal’s letters of 20 and 22 November 2017; (vii) the Parties’ submissions of 5 January 2018 and the Tribunal’s letter of 8 January 2018.

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Date	Lapse	Party / Tribunal	Description
25 September 2017	19 days (from Hearing end)	NON-DISPUTING PARTY	U.S. Second Non-Disputing Party Submission pursuant to Article 10.20.2 of the TPA
11 October 2017	35 days (from Hearing end)	CLAIMANTS AND RESPONDENT	Post-Hearing Briefs on Expedited Objections
6 November 2017	26 days	CLAIMANTS AND RESPONDENT	Statements of Costs on Expedited Objections
13 December 2017		TRIBUNAL	Decision on Expedited Objections

Procedural Calendar following the Expedited Objections Phase

Date	Lapse	Party / Tribunal	Description
7 May 2018	120 days (from 5 January 2018) ²	CLAIMANTS	Memorial
4 September 2018	120 days	RESPONDENT	Counter-Memorial
Document Production			
4 October 2018	30 days	CLAIMANTS AND RESPONDENT	Request for Production of Documents

² Deadline set on 7 May 2018, as 5 May 2018 falls on a Saturday. See ICSID Administrative and Financial Regulations, Regulation 29(2).

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Date	Lapse	Party / Tribunal	Description
5 November 2108 ³	30 days	CLAIMANTS AND RESPONDENT	Production of Documents Non Contested Responses and/or Objections to the Request for Production of Documents
20 November 2018	15 days	CLAIMANTS AND RESPONDENT	Reply to Objections to the Request for Production of Documents – Sent to Tribunal
20 December 2018	30 days	TRIBUNAL	Decision on Objections to Request for Production of Documents
22 January 2019 ⁴	30 days	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal
20 February 2019	29 days	CLAIMANTS	Reply
22 April 2019	60 days	RESPONDENT	Rejoinder
19 June 2019	40 days prior to Hearing	CLAIMANTS AND RESPONDENT	Witness Notification
TBD	TBD	ALL	Pre-Hearing Organizational Meeting

³ Deadline set on 5 November 2018, as 3 November 2018 falls on a Saturday. *See* ICSID Administrative and Financial Regulations, Regulation 29(2).

⁴ Deadline set on 22 January 2019, as 19 January 2019 falls on a Saturday. *See* ICSID Administrative and Financial Regulations, Regulation 29(2).

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Date	Lapse	Party / Tribunal	Description
TBD	TBD	CLAIMANTS AND RESPONDENT	Pre-Hearing Skeleton [TBD] ⁵
29 July – 2 August 2019 3-4 August 2019 (<i>reserved</i>)		ALL	Hearing

⁵ See Tribunal’s letter of 8 January 2018 (“The decision whether or not to order pre-hearing skeletons will be taken at the pre-hearing organisational meeting.”)