

**ARBITRATION UNDER
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE 2010 UNCITRAL ARBITRATION RULES**

Between

DETROIT INTERNATIONAL BRIDGE COMPANY

(on its own behalf and on behalf of its enterprise The Canadian Transit Company)

Claimant

and

THE GOVERNMENT OF CANADA

Respondent

(and together with the Claimant, the “*Disputing Parties*”)

PROCEDURAL ORDER No. 6

March 18, 2014

Arbitral Tribunal

Mr. Yves Derains (Chairman)
The Hon. Michael Chertoff
Mr. Vaughan Lowe, Q.C.

WHEREAS on March 16, 2014, an attorney advisor at the U.S. Department of State and member of the team representing the United States in arbitrations arising under NAFTA Chapter Eleven inquired the Arbitral Tribunal about the possibility of having representatives of the U.S. attending the Hearing on Jurisdiction on March 20-21, 2014 as a non-disputing NAFTA Party;

WHEREAS on March 16, 2014, Canada informed the Tribunal that it had no objections to the attendance at the Hearing on Jurisdiction by representatives of the United States;


WHEREAS on March 17, 2014, DIBC informed the Tribunal that pursuant to paragraph 14 of the Confidentiality Order, all hearings should be held in camera and therefore it did not consent to attendance by non-disputing NAFTA Parties at the Hearing on Jurisdiction;

WHEREAS on March 17, 2014, Canada replied stating, in summary, that the Tribunal should authorize attendance at the Hearing on Jurisdiction by the non-disputing Parties on the grounds of NAFTA Articles 1120(2) and 1128. It argued that even if UNCITRAL Rule Article 28(3) could form the basis to exclude the non-disputing Parties from a hearing, that rule is modified by Article 1128, which gives the NAFTA Parties the right of participation on questions of interpretation of the NAFTA. Canada underlined that Claimant has no legitimate objection to the attendance of the United States and Mexico, especially in light of the fact that they both have made written submissions in this arbitration.

IN LIGHT OF THE ABOVE, THE TRIBUNAL DECIDES AS FOLLOWS:

1. The Tribunal first notes that NAFTA Article 1128 mentions that “*on written notice to the disputing parties, a [non-disputing] Party may make submissions to a Tribunal on a question of interpretation of this Agreement [NAFTA]*”. However, such provision does not mention anything about the physical participation of a non-disputing Party at hearings.
2. The Tribunal further notes that, pursuant to paragraph 14 of the Confidentiality Order dated March 27, 2013, “[a]t the request of the Claimant and in accordance with Article 28(3) of the UNCITRAL Arbitration Rules all hearings shall be held in camera”. At the time this decision was taken the Tribunal and the disputing parties were aware of the NAFTA Chapter Eleven rules.
3. As a consequence, the Confidentiality Order shall be respected and the attendance at the Hearing on Jurisdiction by non-disputing NAFTA Parties is not permitted.

Place of arbitration: Washington DC, USA



Yves DERAINS

Chairman of the Arbitral Tribunal