IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL ARBITRATION RULES OF 1976 ("UNCITRAL Rules")

-between-

WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS CLAYTON, DANIEL CLAYTON AND BILCON OF DELAWARE INC.

(the "Investors")

-and-

GOVERNMENT OF CANADA

(the "Respondent" and, together with the Investors, the "Disputing Parties")

PROCEDURAL ORDER NO. 25

Concerning the Hearing on Damages

ARBITRAL TRIBUNAL:

Judge Bruno Simma (President)
Professor Donald McRae
Professor Bryan Schwartz

Permanent Court of Arbitration (PCA) Case No. 2009-04

WHEREAS the Investors commenced this arbitration by serving on the Respondent a Notice of Arbitration dated May 26, 2008 and a Statement of Claim dated January 30, 2009;

WHEREAS on April 9, 2009, after consultation with the Disputing Parties at a first procedural meeting, the Tribunal issued Procedural Order No 1, which sets out certain procedural rules governing this arbitration, including in respect of hearings;

WHEREAS on June 3, 2009, the Tribunal issued Procedural Order No. 3, in which it ordered the bifurcation of the proceedings between the merits phase and, if liability was found to exist, the damages phase;

WHEREAS on March 17, 2015, the Tribunal issued an Award on Jurisdiction and Liability ("**Award**"), in which the majority found Canada liable for breaches under Articles 1102 and 1105 of NAFTA;

WHEREAS on January 5, 2016, the Tribunal issued Procedural Order No. 20, in which it fixed a procedural timetable for the damages phase;

WHEREAS on August 4, 2016, the Tribunal requested that the Disputing Parties hold two time periods in early 2018 in reserve, during which the hearing could be held;

WHEREAS on August 24, 2017, following the filing of the Investors' Reply on Damages, the Tribunal invited the Disputing Parties to confer and comment on their preferred time period for the hearing, the number of hearing days that was required, and the location and venue of the hearing;

WHEREAS on September 8, 2017, the Disputing Parties informed the Tribunal about points on which they agreed and points on which disagreement remained;

WHEREAS on October 3, 2017, a draft of the present Order was communicated to the Disputing Parties;

WHEREAS on October 20, 2017, October 25, 2017 and November 1, 2017, the Disputing Parties submitted comments on the draft Order;

TAKING INTO ACCOUNT THE COMMENTS RECEIVED, THE TRIBUNAL NOW DECIDES AND ORDERS:

1 Duration, Date and Location of the Hearing

1.1 The hearing on damages shall be held at Arbitration Place in Toronto, ON during the period of February 19-27, 2018.

1.2 The duration of the hearing shall be seven days. The hearing shall take place from 9:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 5.30 p.m. each day, except for Sunday, February 25, and Monday, February 26, on which the Tribunal will not sit. Each day there shall be a one-hour lunch break from 1:00 p.m. to 2:00 p.m., and thirty-minute coffee breaks during the morning and afternoon sessions at a time to be determined by the Tribunal.

1.3 The Tribunal, in consultation with the Disputing Parties, may make modifications to the schedule in the preceding paragraph as it deems appropriate, provided that the Disputing Parties' rights are duly respected.

2 Hearing Bundles

2.1 The PCA will provide each Member of the Tribunal with an electronic copy of the Disputing Parties' written submissions in this arbitration, including all exhibits, witness statements, expert reports, and legal authorities. Accordingly there is no need for the Disputing Parties to prepare hearing bundles.

2.2 By February 12, 2018, each side shall however deliver to the hearing venue: (i) one complete hard copy of all its written submissions on damages (only), including exhibits, witness statements, expert reports, and legal authorities, for use in the hearing room; and (ii) four hard copies of the statements of all witnesses/the opinions of all experts who are scheduled to be examined during the hearing.

2.3 The Disputing Parties shall use document bundles for the examination of witnesses or experts, which shall be handed to the witness or expert directly at the hearing (with one copy for each Member of the Tribunal, the Tribunal secretary and the court reporter, and four copies for opposing counsel). To ensure the efficient conduct of the hearing, such bundles should be made available at the outset of the witness's or expert's examination (rather than document by document, in the course of the examination). All documents shall be marked by using the exhibit numbers recorded in the course of the arbitration pursuant to Section 3 of Procedural Order No. 3.

3 Allocation of Time

3.1 The principle of equal time as between the Disputing Parties shall be observed in the conduct of the hearing. Each side shall be allocated a total time, including opening and closing statements, of 21 hours.[1]

3.2 The hearing shall open with the opening statements of the Investors, to be followed by those of the Respondent. The Disputing Parties and the Tribunal may then examine witnesses and experts, in an order to be agreed between the Disputing Parties and the Tribunal or decided by the Tribunal in advance of the hearing. Following the examination of witnesses and experts, there shall be a round of closing statements.

3.3 Each side shall be allocated three hours at maximum to make its opening statement, and three hours at maximum to make its closing statement. Each side may at its discretion reserve time out of the three hours allocated for closing statements for rebuttal statements, it being understood however that such rebuttal statements shall be strictly limited to responding to points made in the opposing side's closing statement.

3.4 The time taken for opening and closing statements, including any rebuttal statement to the other side's closing statement, shall be counted towards the overall time allocation of each side. Time spent on direct or re-direct examination of witnesses and experts, including expert presentations, shall be counted toward the time account of the side presenting the witness or expert, whereas time spent on cross-examination shall be counted toward the opposing side's time account. Time spent on expert conferencing, if any (*see* Section 5.3), shall be counted in half toward both Disputing Parties' time accounts. Time spent on housekeeping matters or responding to Tribunal questions shall not be counted toward either side's time account.

3.5 The Disputing Parties are requested to consult with each other with a view to agreeing on the order of appearance of witnesses and experts. Witnesses who are also representatives of a

[1] 7 days x 6 hours for "party time" per day = 42 hours/2 = 21 hours each.

Disputing Party shall be scheduled first in the sequence of witnesses. The Disputing Parties are requested to submit a scheduling proposal to the Tribunal by January 26, 2018.

4 Examination of Witnesses

4.1 Witness statements shall stand in lieu of direct examination during the oral hearing. Accordingly, witnesses shall appear for testimony at the oral hearing only if they are called by the opposing side or the Tribunal for cross-examination. By December 1, 2017, each side shall notify in writing to the other side, with a copy to the Tribunal, the names of the witnesses whom it wishes to cross-examine at the hearing.

4.2 In the event that a witness is called for cross-examination, the side that has submitted a witness statement shall be responsible for summoning the witness to the hearing. In the event that a Party does not make a witness or expert available, the requesting Party may apply for any additional ruling from the Tribunal, including the setting aside of the prior testimony of that witness or expert, or the drawing of adverse inferences. In exercising its discretion, the Tribunal shall *inter alia* consider the cause of nonappearance. The Disputing Parties shall use best efforts to make each witness available for examination half a day before and after the time at which their examination is scheduled.

4.3 At the hearing, the examination of each witness shall proceed as follows: The side summoning the witness may briefly introduce the witness and provide him or her with an opportunity to make corrections or clarifications to his or her statement; the opposing side may then cross-examine the witness; the side summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination. The Tribunal may examine the witness at any time, before, during or after examination by one of the Disputing Parties. The scope of cross examination shall relate to issues relevant to the witnesses' or experts' written or oral evidence.

4.4 Unless the Disputing Parties agree otherwise, prior to his or her examination, a fact witness shall not be present in the hearing room; discuss the oral arguments or the testimony of any other witness who has already testified prior to giving his or her testimony; read any transcript of oral arguments or oral testimony; or listen to or watch any audio or video recording of the oral arguments or oral testimony. These restrictions do not apply to witnesses who are representatives of a Disputing Party; nor do they apply to witnesses who have submitted a statement in this arbitration, but have not been called for cross-examination.

4.5 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant; limit or refuse the right of a Disputing Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or direct that a witness be recalled for further examination at any time.

5 Examination of Experts

5.1 Expert reports shall stand in lieu of direct examination during the oral hearing. Accordingly, experts shall appear for testimony at the oral hearing only if they are called by the opposing side or the Tribunal for cross-examination. By December 1, 2017, each side shall notify in writing to the other side, with a copy to the Tribunal, the names of the experts it wishes to cross-examine at the hearing.

5.2 The provisions of Sub-sections 4.2, 4.3, and 4.5 shall apply *mutatis mutandis* to the evidence of experts.

5.3 In addition to, and following, cross-examination of experts by the Disputing Parties, the Tribunal may require experts with corresponding areas of specialization to give evidence concurrently and to discuss any areas of disagreement between them in the presence of the Tribunal (expert conferencing).

5.4 FTI Consulting and The Brattle Group may provide brief PowerPoint presentations summarising their opinions before being cross-examined. Such presentations shall not exceed thirty minutes, and best efforts shall be made to have the presentations on the same day. If the presentations cannot be made on the same day, then at the end of the day on which FTI Consulting gives its presentation, The Brattle Group's presentation shall be provided to the Tribunal secretary and held by him in escrow. The Tribunal secretary shall distribute this presentation to the Tribunal and the parties immediately prior to The Brattle Group's testimony. The presentations must not refer to any new evidence or documents not already on the record and must be limited to the scope of the expert's report. The presentations and cross-examinations of FTI Consulting and The Brattle Group will follow the cross-examinations of all other experts and witnesses.

6 Presentation of Documents

6.1 Documents that do not form part of the record in this arbitration may not be presented at the hearing, unless the Disputing Parties so agree or the Tribunal, having consulted with the Parties, exceptionally authorizes their presentation.

6.2 Demonstrative exhibits, such as PowerPoint presentations, are permissible as long as they represent or rely upon documents in the record. To the extent that evidence is represented or relied upon in such demonstrative exhibits, the exhibit numbers pursuant to Section 3 of Procedural Order No. 3 of the documents in which such evidence is contained shall be clearly indicated. The Disputing Party submitting such demonstrative exhibits shall provide them in hard copy to the other side, each Member of the Tribunal, the Tribunal secretary, and the court reporter immediately prior to their use at the hearing. In addition, as soon as possible after the hearing, the Disputing Parties shall produce electronic copies of all demonstrative exhibits used at the hearing.

7 Transparency and Records of Hearings

7.1 In accordance with Procedural Order No. 2, the hearing shall be open to the public except when necessary to protect confidential information. The hearing shall be made accessible to the public by transmitting a feed to a viewing room (separate from the hearing room) at Arbitration Place. Members of the public shall not be allowed in the hearing room. The feed shall be stopped as necessary to prevent confidential information from being disclosed to the public. Any objection to the designation by a Party of a portion of the hearing as confidential shall, whenever possible, be resolved in confidential session immediately when the objection is raised.

7.2 In order to ensure that confidential information is protected at the hearing, each Disputing Party shall provide electronic copies of a "confidential" version of every pleading, witness statement, expert report and exhibit that has been designated confidential, with the confidential information only highlighted or contained in grey boxes so that the confidential information is legible, to the other Disputing Party, the Members of the Tribunal, and the PCA by January 30, 2018.

7.3 The hearing shall be recorded and transcribed, and the hearing transcripts and videos shall be made publicly available on the PCA's webpage after the hearing, subject to redactions and video

editing to remove confidential information. The Tribunal shall make the final determination regarding such redactions and video editing, in consultation with the Disputing Parties

7.4 Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the Disputing Parties and the Members of the Tribunal in the hearing room. Further, rough transcripts should be provided by e-mail in the evening of each hearing day.

7.5 Non-disputing NAFTA Parties may be present in the hearing room throughout the hearings (including during confidential sessions).

7.6 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.

8 Logistical Issues regarding the Hearing

8.1 The PCA shall arrange the catering of lunches and sufficient supplies of refreshments every hearing day. The Disputing Parties are invited to advise the PCA of any dietary requirements.

8.2 Each side is requested to provide the PCA with a list of hearing attendees by February 12, 2018.

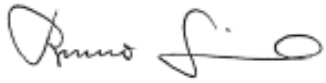
9 Tribunal Questions

9.1 By January 22, 2018 the Tribunal shall endeavour to identify for the Disputing Parties issues and questions, if any, that the Disputing Parties should consider addressing at the hearing.

9.2 On February 24, 2018, the Tribunal shall identify any further issues or questions that the Disputing Parties should consider addressing in their closing statements, without prejudice to the right of the Disputing Parties to structure their closing statements in the way that they may choose.

Date: November 17, 2017

For the Arbitral Tribunal:



Judge Bruno Simma
(Presiding Arbitrator)