

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE 1976 UNCITRAL ARBITRATION RULES**

-between-

**RESOLUTE FOREST PRODUCTS INC.**

Claimant

-and-

**GOVERNMENT OF CANADA**

Respondent

**(PCA CASE NO. 2016-13)**

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**PROCEDURAL ORDER NO. 16**  
**ON VIRTUAL HEARING PROCEDURES**

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**ARBITRAL TRIBUNAL**

Professor Bernard Hanotiau (President)  
Dean Ronald A. Cass  
Professor Céline Lévesque

**4 OCTOBER 2021**

## **1 VIRTUAL EVIDENTIARY HEARING**

- 1.1 As agreed between Claimant Resolute Forest Products Inc. and Respondent the Government of Canada (together, the “Disputing Parties”) and in accordance with Article 15(1) of the UNCITRAL Rules (1976), in light of the COVID-19 global pandemic and resultant health and travel restrictions that make an in-person hearing impossible, the hearing scheduled to take place from October 18-19, 2021 shall be conducted online using the Zoom online video application. The Tribunal may order that the evidentiary hearing be conducted by a different online means if it determines that the Zoom application is inadequate to allow the Disputing Parties to present their cases or its level of security is insufficient for the protection of confidential information.
- 1.2 The hearing shall be deemed to have occurred at the place of arbitration: Toronto, Ontario, Canada.
- 1.3 The Disputing Parties agree to use the facilities and assistance of Arbitration Place for the online hearing. The Permanent Court of Arbitration (“PCA”) and Arbitration Place shall be designated as “co-hosts” of the Zoom online hearing. Prior to the hearing, the PCA will coordinate with Arbitration Place and the Tribunal to enable (or disable) specific Zoom settings to comply with this Order. During the hearing, the Tribunal will manage hearing participants and exercise control over Zoom settings, and the PCA and Arbitration Place may take steps to assist or otherwise facilitate such control by the Tribunal.
- 1.4 Pursuant to Section 22.1 of Procedural Order No. 1, a pre-hearing conference was held on September 23, 2021 at 10:00 EST/16:00 CEST.

## **2 HEARING NOTICE AND AUTHORIZED ATTENDEES**

- 2.1 Pursuant to Procedural Order No. 1 Section 18.1, which allows the Tribunal to vary its orders if the circumstances so require, in light of the substantial amount of information that has been designated as Confidential and Restricted Access, the Tribunal hereby varies Procedural Order No. 1 Section 15.1 and Section 23 as follows.
- 2.2 The hearing shall be open to the public via livestream hosted by PCA. Those wishing to access the livestream of the hearing are requested to register in advance with the PCA. The PCA will restrict the livestream from public access during sessions of the hearing identified in accordance with Section 2.7 below and in consideration of Section 23.1 of Procedural Order No. 1.
- 2.3 On the day before each hearing day, Arbitration Place will send an e-mail invitation with a weblink and “Meeting ID” for the Zoom hearing the next day to each person who is identified in Sections 2.5 and 2.6 as an authorized hearing attendee (“Authorized Attendee(s)”), and only such persons shall be authorized to attend the hearing.
- 2.4 Access to the hearing will be password-protected. Passwords for a hearing day will be distributed on the previous day securely by the PCA (through an FTP site or other similar method) only to those Authorized Attendees listed in Section 2.5. Recipients of the password shall not, under any circumstances, forward or share the password with other individuals. Only Authorized Attendees who receive a password by the PCA directly may use that password in order to participate in the hearing.
- 2.5 In addition to the Tribunal, the PCA, and Arbitration Place, only the following persons may be considered Authorized Attendees for the hearing:
  - a. counsel to a Disputing Party (and their support staff, including Information Technology (“IT”) personnel) or counsel to provincial, territorial or municipal governments whose involvement

in the preparation or conduct of these proceedings is reasonably considered by a Disputing Party to be necessary in connection with preparation of the Disputing Party's case;

- b. officials or employees of the Disputing Parties or of provincial, territorial, or municipal governments to whom disclosure is reasonably considered by the Disputing Party to be necessary in connection with preparation of the Disputing Party's case; and
- c. court reporters and other hearing support staff.

- 2.6 Each Disputing Party shall provide a list of hearing participants in the format suggested in **Annex 1**, listing each participant's name, affiliation, phone number, email addresses (where they will be reachable on the day(s) they attend the hearing), the location from which the participant will attend the hearing, and whether the participant is privy to Restricted Access information, via e-mail to the PCA and Arbitration Place by October 11, 2021. Should there be any changes to the list, the Disputing Parties will inform the PCA and Arbitration Place as soon as practicable.
- 2.7 Upon the request of either Disputing Party or on the initiative of the Tribunal, the hearing shall be carried out in a restricted access session whenever documents designated as Restricted Access are to be discussed. Only those individuals identified in Section 28 of the Confidentiality Order shall be permitted to attend such sessions. The Disputing Parties shall make best efforts to organize their oral submissions in a way to efficiently address Restricted Access information so as to minimize disruption to the hearing. Following the conclusion of the hearing, the Parties shall review the final hearing transcripts and propose redactions to only the specific Restricted Access information, in line with Section 18 of the Confidentiality Order.

### **3 TECHNICAL CAPABILITIES AND PRE-HEARING TESTING**

- 3.1 A test of the Zoom application ahead of the Hearing shall be conducted with counsel and the Tribunal, for which Arbitration Place will circulate an e-mail invitation. The purpose of this test is to allow participants to assess the quality of their audio and video transmissions and to make necessary adjustments, as well as to experience key platform functions, including microphone muting, display options, screen sharing, electronic presentation of evidence, and transitions between the Waiting Room, Hearing Room, and Break-Out Rooms. The test session shall also include a mock Restricted Access session.
- 3.2 Prior to the test of the Zoom application, the Tribunal shall work separately with the PCA and Arbitration Place to ensure the Tribunal is comfortable and familiar with the functions of Zoom. In addition, during such discussions, the Tribunal will decide on its internal procedures for communicating during the hearing, cognizant of the fact that a secure platform will be required for such communications and the chat function on Zoom will be disabled.
- 3.3 Following the test of the Zoom application the Tribunal reserves the right to modify this Procedural Order with respect to the procedures on using Zoom, as consistent with Section 10.1 of this Procedural Order, and also the right to determine that the hearing shall be conducted through other means if the Tribunal anticipates that Zoom will be inadequate to carry out the hearing.
- 3.4 Hearing participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Among other things, participants should take into account:
- a. steps that may be taken to establish a high-speed internet connection (e.g., (i) if possible, a hard-wired internet connection is generally preferable to a wireless internet connection and (ii) unnecessary computer applications should be turned off rather than left running in the background);
  - b. using the computer microphone (with or without a headset) for audio transmission and reserving the optional dial-in number in case of poor quality internet access;

- c. eliminating foreseeable background noise and taking steps to ensure any unauthorized persons in close proximity will be aware of and will not disturb a hearing in-progress;
  - d. camera positioning and lighting (e.g., sitting near a window is to be avoided and it may be helpful to position a light in front of (and not behind) the participant);
  - e. accessing Zoom via desktop or laptop using the Zoom application rather than a browser;
  - f. no Authorized Attendee may use a device with a screen size, measured diagonally, of less than 12.5 inches (*i.e.*, smartphones and tablets are not permitted except under exigent circumstances and express approval by the Tribunal); and
  - g. ensuring computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary.
- 3.5 To safeguard the privacy of the Zoom hearing, no participant shall join from a public setting or use unsecured, public wireless connection. To the extent possible, Authorized Attendees should consider connecting through an enterprise-grade virtual private network (*i.e.*, “VPN”).
- 3.6 Hearing attendees shall be responsible for ensuring that the Zoom client application on their computer is up-to-date.

#### **4 PROCEDURES UPON JOINING THE HEARING**

- 4.1 Participants should access the Zoom hearing using the credentials provided by Arbitration Place at least twenty minutes prior to the scheduled start time. The hearing shall not begin until the Tribunal is satisfied that all necessary Authorized Attendees are adequately connected to Zoom.
- 4.2 Prior to the scheduled start time, Authorized Attendees will be directed to a virtual Waiting Room. To facilitate identification, Authorized Attendees should join the Zoom call using their full names as indicated in the list of hearing participants, followed by an indication of the team to which they belong and their role on that team, e.g. “John Smith (Claimant, Counsel)” or “Jane Smith (Respondent, Expert).
- 4.3 Arbitration Place will admit Authorized Attendees to the Zoom meeting after verifying their identity against the list of hearing participants. Once all Authorized Attendees have joined the hearing, the Tribunal will direct Arbitration Place to “lock the meeting” to prevent other persons from joining. The Tribunal may direct Arbitration Place to “unlock the meeting” as necessary (*e.g.*, to permit an Authorized Attendee experiencing technical difficulties to re-join after disconnecting).
- 4.4 As a default, participants will be asked to keep their microphones on “mute” and video camera off unless and until they wish to speak. Participants may not use a “Virtual Background.” Instead, the remote room in which they are located must be visible.

#### **5 CHAT AND BREAK-OUT FUNCTIONS**

- 5.1 The general “Chat” function in Zoom will be disabled, and may only be used by hearing participants to communicate with the meeting hosts, Arbitration Place and the PCA. The Disputing Parties may use other means to communicate internally.
- 5.2 From time to time, the Tribunal may use a Break-Out Room to confer privately. When Restricted Access information is discussed, the Tribunal will direct Arbitration Place to place all Authorized Attendees who are not identified in Section 28 of the Confidentiality Order in the Waiting Room. The Tribunal may in its discretion direct or approve the use Break-Out Rooms to facilitate private conversations between other case participants (*e.g.*, to allow members of a counsel team to confer with each other directly, outside of the presence of the Tribunal and opposing counsel).
- 5.3 The following Zoom settings will apply with respect to Break-Out Rooms:

- a. Participants will be allowed to leave and return to their designated Claimant, Respondent or Tribunal Break-Out Room, as applicable, at any time during the session.
  - b. Arbitration Place will broadcast a notification to the Parties sixty (60) seconds before the participants are returned to the main Hearing Room.
  - c. If a Break-Out Room is closed, a countdown of sixty (60) seconds shall apply before participants are returned to the main Hearing Room.
- 5.4 To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the Zoom hearing during any recess. In its discretion, the Tribunal may instruct Arbitration Place or the PCA to move participants to the virtual Waiting Room or to one or more Break-Out Rooms.

## **6 TECHNICAL FAILURE PROTOCOL**

- 6.1 In the event that an Authorized Attendee is disconnected from the videoconference or experiences some other technical failure and internet connection cannot be re-established within approximately 10 minutes:
- a. the Authorized Attendee suffering from technical failure should notify the PCA and/or Arbitration Place by e-mail at an address to be provided to participants ahead of the hearing and monitor e-mail for any further instructions from the Tribunal;
  - b. the Tribunal shall pause temporarily the proceedings to accommodate a technical failure occurring to an Authorized Attendee whose participation is necessary to the current proceedings;
  - c. in the event the Authorized Attendee suffering from technical failure is unable to reach the PCA or Arbitration Place by e-mail, they should call the PCA Secretariat or Arbitration Place at a number to be provided to participants ahead of the hearing; and
  - d. the Tribunal may take whatever steps are necessary to ensure the fairness and integrity of the proceedings, including directing the Authorized Attendee suffering from technical failure to join by telephone connection or other audio-only connection or, if necessary, pausing the videoconference at any time or repeating a portion of the session.
- 6.2 In support of the remedial steps enumerated in Section 6.1, there will be a reserve dial-in number for the Zoom meeting provided by Arbitration Place in case one or more Authorized Attendees has poor quality computer audio or experiences internet connectivity issues. The reserve dial-in number shall be used only if an Authorized Attendee experiences technical difficulties. Only Authorized Attendees are permitted access to the reserve dial-in number and the dial-in number may not be shared with individuals other than Authorized Attendees.
- 6.3 If the Tribunal deems it unfair to any Disputing Party to continue the Zoom hearing because of a technical failure, the Tribunal may terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.

## **7 RECORDING OF THE HEARING**

- 7.1 No video recordings or screenshots of the hearing shall be permitted, either by Zoom, any other technology, or use of a separate device.
- 7.2 Sections 23.2 to 23.5 of Procedural Order No. 1 shall apply with respect to audio recordings and transcripts. Instructions for accessing the real time transcript of the hearing for each day will be provided by Arbitration Place with the e-mail invitation and weblink for the Zoom meeting. In order to protect Restricted Access information, the participants who are not privy to Restricted Access information pursuant to Section 28 of the Confidentiality Order and as indicated in the parties' lists of hearing participants pursuant to Section 2.6 of this Order, may not have access to the real

time transcript of the hearing. Authorized Attendees should ensure that they are able to access the transcript either on their primary screen or on a second device.

## **8 EXHIBITS, WITNESS STATEMENTS, AND RELATED EVIDENTIARY MATTERS**

8.1 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 of the documents in which such evidence is contained shall be clearly indicated. The Disputing Party submitting such a demonstrative exhibit shall provide it electronically to the other Disputing Party, each Member of the Tribunal, the Tribunal Secretary, and the court reporter immediately prior to its use at the hearing. The Disputing Parties are permitted to control the presentation of documents and demonstrative exhibits with the assistance of their authorized staff and IT personnel.

## **9 ALLOCATION OF TIME**

9.1 The schedule of the hearing is contained in **Annex 2** to this procedural order.

9.2 The principle of equal time as between the Disputing Parties shall be observed in the conduct of the hearing. Each Party shall be allocated 3.5 hours of total hearing time. Each Disputing Party shall be allocated a maximum of two hours and thirty minutes to make its opening statement, and a maximum of one hour to make its rebuttal argument.

9.3 The Tribunal in its discretion may afford a Disputing Party additional time. An equivalent amount of time shall be allocated to the other Disputing Party.

9.4 The time taken for opening statements and rebuttal argument to the other Disputing Party's closing argument, shall be counted towards the overall time allocation of each Disputing Party. Time spent on housekeeping matters or responding to Tribunal questions shall not be counted toward either side's time account.

## **10 MODIFICATIONS OF THIS ORDER**

10.1 The Tribunal may modify this Order in its discretion as circumstances required in order to protect the fairness and integrity of the hearing.

## **11 COSTS**

11.1 Absent good cause, the Disputing Parties shall share the cost of support functions to conduct the virtual hearing, whether performed by participants or a third-party provider, as such costs are incurred. The Tribunal will decide upon the appropriate allocation of such costs in the award or at the time the arbitration is concluded.

Date: 4 October 2021

**For the Arbitral Tribunal:**



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Professor Bernard Hanotiau

**Annex 1**

**List of Hearing Participants**

#	Name	Affiliation (Claimant/Respondent)	Role at Hearing (e.g. Counsel, Party Representative)	Telephone	E-mail	Location	Presence in Restricted Access information Session (Y/N)	Same day delivery of Hearing transcript (Y/N)
1.								

## Annex 2

### Schedule

<b>Monday, October 18</b>			
8:00 A.M. – 8:10 A.M. (EDT)	9:00 A.M. – 9:10 A.M. (ADT)	2:00 P.M. – 2:10 P.M. (CEST)	Housekeeping
8:10 A.M. – 9:10 A.M. (EDT)	9:10 A.M. – 10:10 A.M. (ADT)	2:10 P.M. – 3:10 P.M. (CEST)	Opening Statements of the Claimant (1 hour)
Break (10 minutes)			
9:20 A.M. – 10:50 A.M. (EDT)	10:20 A.M. – 11:50 A.M. (ADT)	3:20 P.M. – 4:50 P.M. (CEST)	Opening Statements of the Claimant (1 hour 30 minutes)
Break (20 minutes)			
11:10 A.M. – 12:40 P.M. (EDT)	12:10 P.M. – 1:40 P.M. (ADT)	5:10 P.M. – 6:40 P.M. (CEST)	Opening Statements of Canada (1 hour 30 minutes)
Break (10 minutes)			
12:50 P.M. – 1:50 P.M. (EDT)	1:50 P.M. – 2:50 P.M. (ADT)	6:50 P.M. – 7:50 P.M. (CEST)	Opening Statements of Canada (1 hour)
1:50 P.M. onwards (EDT)	2:50 P.M. onwards (ADT)	7:50 P.M. onwards (CEST)	Tribunal questions, if any, in addition to those asked during the presentations.
<b>Tuesday, October 19</b>			
9:00 A.M. – 9:10 A.M. (EDT)	10:00 A.M. – 10:10 A.M. (ADT)	3:00 P.M. – 3:10 P.M. (CEST)	Housekeeping
9:10 A.M. – 10:10 A.M. (EDT)	10:10 A.M. – 11:10 A.M. (ADT)	3:10 P.M. – 4:10 P.M. (CEST)	Rebuttal Statements of the Claimant (1 hour)
Break (10 minutes)			
10:20 A.M. – 11:20 A.M. (EDT)	11:20 A.M. – 12:20 P.M. (ADT)	4:20 P.M. – 5:20 P.M. (CEST)	Rebuttal Statements of Canada (1 hour)
11:20 A.M. onwards	12:20 P.M. onwards	5:20 P.M. onwards	Tribunal questions, if any, in addition to those asked during the presentations.