

November 14, 2019

By email

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Mr. Doak Bishop
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Sir Daniel Bethlehem QC
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Dear Mr. President and Members of the Tribunal:

Re: Canada's reply on confidentiality designations

On Tuesday, November 12th, Canada submitted a response to the Investor's objections to the general confidentiality designations claimed by Canada. In this response, for the very first time, Canada offered specific information attempting to justify its confidentiality claims. Up until Canada's most recent letter, the Investor was unaware of the grounds upon which Canada's attempts to suppress information from the public.

NAFTA Article 1115 confirms that the Tribunal must provide due process. Article 15 of the 1976 UNCITRAL Arbitration Rules require that:

"The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case."

There can be no question that the Investor must be given an opportunity to fully present its case. In light of the principles of due process, fairness and procedural equality, the Investor must be given an opportunity to respond to the new information contained in Canada's letter. To this end, the Investor proposes that it be given until Tuesday, November 19th to respond.

Similarly, Canada should be given a short period of rebuttal which we propose should be set at Friday, November 22nd.

The confidentiality order contemplated that the parties have an opportunity to agree on a possible compromise. In accordance with Para. 17 of the Confidentiality Order, both parties should be given until Wednesday, November 27th to see if there is a potential for an agreement between the disputing parties.

We propose that this period for potential agreement be limited to a further three days, after which the matter would completely in the hands of the Tribunal.

On behalf of counsel for the Investor.

A handwritten signature in blue ink, appearing to read "Barry Appleton".

Barry Appleton
Counsel for the Investor

cc:

Edward Mullins
Canada Legal Team