

**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 THE INVESTORS OF DELAWARE INC.**

(the “Investors” or “Bilcon”)

-and-

GOVERNMENT OF CANADA

(the “Respondent” or “Canada” and, together with, the “Disputing Parties”)

PROCEDURAL ORDER NO. 27

(Regarding Interest on the Award on Damages and the Calendar for Costs Submissions)

ARBITRAL TRIBUNAL

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

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

I. INTRODUCTION

1. This Procedural Order reflects the Disputing Parties' agreement with regard to the running of interest on the amounts awarded by the Tribunal to the Investors in the Award on Damages of January 10, 2019 as well as the procedural calendar for costs submissions.

II. PROCEDURAL HISTORY

2. On January 10, 2019, the Tribunal issued the Award on Damages, awarding the Investors "the amount of US\$ 7 million as compensation for the Respondent's breaches of NAFTA". In addition, the Respondent was ordered to pay "interest on this amount at a rate of the average one-year U.S. Treasury bill yield for the corresponding calendar year, accruing annually on a compounded basis, starting on 22 October 2007 and until full payment has been made".¹
3. In its Award on Damages, the Tribunal also determined that "[a]ny decision on the costs of arbitration is deferred to a final award on costs".²
4. On February 22, 2019, following the completion of redactions of confidential information in the Award on Damages, the Tribunal consulted the Disputing Parties with respect to the procedural calendar for the filing of submissions on costs. On March 1, 2019, the Tribunal confirmed the procedural calendar agreed between the Parties.
5. On April 11, 2019, the Respondent informed the Tribunal that the Investors had commenced legal proceedings at the place of arbitration, Ontario, Canada, seeking to set aside the Award on Damages. The Respondent requested the Tribunal to suspend the enforcement of the Award on Damages, including the running of interest on the amount granted, from April 8, 2019 onwards and until the set-aside proceedings commenced by the Investors had been completed.
6. By letter dated April 26, 2019, the Investors notified the Tribunal that the Disputing Parties had reached an agreement with regard to the running of interest on the Award on Damages, pending the conclusion of set-aside proceedings in Ontario, Canada. In the same letter, the Investors informed the Tribunal that both Disputing Parties had also agreed to suspend the procedural calendar until the conclusion of the set-aside proceedings, and that they "jointly request[ed] an order confirming the [Disputing] Parties' agreement".³

III. THE TRIBUNAL'S DECISION

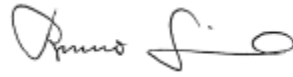
7. Having regard to the Disputing Parties' agreement, the Tribunal orders as follows:
 - a. **The Disputing Parties' costs submissions shall be deferred until a Canadian court has dismissed or allowed the application for set aside and there is no further appeal; and**
 - b. **The Tribunal's order in the Award on Damages requiring Canada to pay interest on the amount awarded shall be suspended effective April 8, 2019, until a Canadian court has dismissed or allowed the application for set-aside and there is no further appeal.**

¹ Award on Damages, 10 January 2019, para. 404(a), para. 404(b).

² Award on Damages, 10 January 2019, para. 404(d).

³ Claimants' letter to the Tribunal, 26 April 2019.

Date: May 8, 2019



For the Tribunal

Judge Bruno Simma
(Presiding Arbitrator)