IN THE MATTER OF AN ARBITRATION UNDER ANNEX 14-C OF THE CANADA-UNITED STATES-MEXICO AGREEMENT, CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BETWEEN:

CYRUS CAPITAL PARTNERS, LP AND CONTRARIAN MANAGEMENT, LLC

Claimants

AND:

UNITED MEXICAN STATES

Respondent

ICSID CASE NO. ARB/23/33

NON-DISPUTING PARTY SUBMISSION OF THE GOVERNMENT OF CANADA PURSUANT TO NAFTA ARTICLE 1128

July 15, 2025

Departments of Justice and
Global Affairs Canada
Trade Law Bureau
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
CANADA

TABLE OF CONTENTS

I. INTRODUCTION

1. The Government of Canada makes this submission pursuant to Article 1128 of the North American Free Trade Agreement ("NAFTA"),[1] which authorizes non-disputing Parties to make submissions to a tribunal on a question of interpretation of the NAFTA, and as a Party to the Canada-United States-Mexico Agreement ("CUSMA"), the successor agreement to the NAFTA.

2. This submission is not intended to address all interpretative issues that may arise in this proceeding. To the extent that certain issues raised by the disputing parties have not been addressed in this submission, Canada's silence should not be taken to constitute concurrence or disagreement with the positions advanced by the disputing parties.

3. Canada does not take a position on issues of fact or on how the interpretations it submits below apply to the facts of this dispute.

II. THE CUSMA PROTOCOL, CUSMA ANNEX 14-C AND NAFTA CHAPTER ELEVEN SECTION A

A. The CUSMA Protocol Terminated the NAFTA, Releasing the NAFTA Parties from the Substantive Obligations of NAFTA Chapter Eleven

4. On July 1, 2020, CUSMA entered into force. The Protocol Replacing the North American Free Trade Agreement with the Agreement between Canada, the United States of America, and the United Mexican States (the "Protocol") specifically states:

> 1. Upon entry into force of this Protocol, the CUSMA, attached as an Annex to this Protocol, shall supersede the NAFTA, without prejudice to those provisions set forth in the CUSMA that refer to provisions of the NAFTA."[2]

5. When CUSMA superseded NAFTA on July 1, 2020, the NAFTA was terminated, and no provision of NAFTA continued to apply except those that were expressly referred

[1] *North American Free Trade Agreement*, 17 December 1994, (1993) 32 I.L.M. 289, 605 ("NAFTA").

[2] Canada-United States-Mexico Agreement ("CUSMA") – *Protocol replacing the North American Free Trade Agreement with the agreement between Canada, the United States of America, and the United Mexican States* ("Protocol"), 30 November 2018, ¶ 1.

to in CUSMA. As a result, upon termination of NAFTA, the NAFTA Parties were released from their obligations under that treaty, consistent with customary international law as articulated in Article 70(1)(a) of the *Vienna Convention on the Law of Treaties* ("VCLT"). According to Article 70(1)(a) of the VCLT, "[u]nless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty […] releases the parties from any obligation further to perform the treaty". As explained below, neither the NAFTA, nor the Protocol, nor the CUSMA provide otherwise, and the NAFTA Parties did not otherwise agree.

6. The NAFTA did not contain a survival (or sunset) clause, which are commonly found in bilateral investment treaties. When treaty parties intend for certain substantive obligations of the treaty to remain in force for a certain period of time following the treaty's termination they have included such a provision. A survival clause has been included in many bilateral investment treaties to which Canada, the United States and Mexico are a party.[3] The NAFTA Parties did not include such a survival clause in NAFTA and as a result NAFTA Chapter Eleven's substantive obligations did not remain in force upon the treaty's termination. If the NAFTA Parties had intended for NAFTA Chapter Eleven substantive obligations to continue to apply after termination, they would have adopted clear language in the CUSMA Protocol or in the CUSMA, stating that NAFTA Chapter Eleven's substantive obligations "continue to be effective" or "continue to apply" for a specified period of time from the date of termination.[4] They did not. In contrast to CUSMA

[3] *See for e.g., Agreement between the Government of Canada and the Government of the People's Republic of China for the promotion and reciprocal protection of investments* ("Canada-China FIPA"), Article 35.3: "3. With respect to investments made prior to the date of termination of this Agreement, Articles 1 to 34, as well as paragraph 4 of this Article, shall continue to be effective for an additional fifteen-year period from the date of termination." *See also, United States – Morocco Free Trade Agreement*, Article 1.2(4): "4. Notwithstanding paragraph 3, for a period of ten years beginning on the date of entry into force of this Agreement, Articles VI and VII of the Treaty shall not be suspended:

(a) in the case of investments covered by the Treaty as of the date of entry into force of this Agreement; or

(b) in the case of disputes that arose prior to the date of entry into force of this Agreement and that are otherwise eligible to be submitted for settlement under Article VI or VII."

[4] *See e.g.*, Canada-China FIPA, Article 35.3, and *2012 U.S. Model Bilateral Investment Treaty*, Article 22.3: "3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments

Article 34.1 (Transitional Provisions from NAFTA 1994), which states that "Chapter Nineteen of NAFTA 1994 shall continue to apply […]", there is no equivalent provision providing for the continued application of NAFTA's substantive investment provisions. The Parties intentionally did not use the phrase "shall continue to apply" in relation to Section A of NAFTA Chapter Eleven in Article 34.1, Annex 14-C, or anywhere else in CUSMA.

7. Instead, as explained in the next section, the NAFTA Parties negotiated and set out a specific remedy for investors holding a "legacy investment" in CUSMA Annex 14-C (Legacy Investment Claims and Pending Claims). Annex 14-C provides the Parties' consent to the submission of a claim to arbitration in accordance with NAFTA Section B with respect to a legacy investment for three years following NAFTA's termination. It is not a survival clause; it merely allows pre-termination breaches to be arbitrated under Section B of NAFTA Chapter Eleven for a defined period.

8. Likewise, the CUSMA Protocol does not provide a survival clause. It provides that the CUSMA supersedes NAFTA "without prejudice to those provisions set forth in the CUSMA that refer to provisions of the NAFTA". It is impermissible to read into the "without prejudice" phrase survival commitments for Section A of NAFTA Chapter Eleven, Article 1502(3) and Article 1503(2)(a) that do not exist.

9. The subsequent practice of all three CUSMA Parties is evidence of the Parties' agreement that the CUSMA Protocol and CUSMA Annex 14-C do not permit claims based on an alleged NAFTA breach that occurred after the NAFTA was terminated.[5] A tribunal

established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments."

[5] Each of the CUSMA Parties has publicly stated that it did not consent in Annex 14-C to the submission of claims for alleged breaches of NAFTA obligations that occurred after the NAFTA terminated. *See e.g., TC Energy Corp. & TransCanada Pipelines Ltd. v. United States of America* (ICSID Case No. ARB/21/63), Mexico's Submission Pursuant to Article 1128 of NAFTA, 11 September 2023, ¶ 5; *Legacy Vulcan, LLC v. United Mexican States* (ICSID Case No. ARB/19/1), Second Submission of the United States of America, 21 July 2023, ¶¶ 8-12; *Legacy Vulcan, LLC v. United Mexican States* (ICSID Case No. ARB/19/1), Mexico's Counter-Memorial on the Ancillary Claim, 19 December 2022, ¶¶ 407-14; *Legacy Vulcan, LLC v. United Mexican States* (ICSID Case No. ARB/19/1), Mexico's Rejoinder on the Ancillary Claim, 21 April 2023, ¶¶ 258-87; *Ruby River Capital LLC v. Canada* (ICSID Case No. ARB/23/5), Contre-Mémoire Sur Le Fond et Mémoire Sur La Compétence Du Canada, 15 July 2024, ¶ 262; *Alberta Petroleum Marketing Commission v.*

constituted under CUSMA Annex 14-C tribunal must take this subsequent practice into account.[6]

10. The intentional absence of a survival clause in the NAFTA or CUSMA Protocol demonstrates that there was no agreement between Canada, Mexico, and the United States to extend NAFTA's investment obligations. This interpretation is confirmed by the Parties' shared understanding as articulated in their submissions after the termination of NAFTA. The tribunal in *TC Energy v. United States* was therefore correct in its finding that since the CUSMA Parties did not agree to extend Section A of NAFTA Chapter Eleven beyond 30 June 2020, no such extension may be implied through a claimant's request for arbitration.[7]

11. Any measure taken after the termination of NAFTA cannot directly engage the international responsibility of Canada, Mexico or the United States under that treaty. According to the fundamental rule of customary international law, "[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs."[8] The longstanding principle that a State's responsibility for a breach of an international obligation must be based on the obligations

---

United States of America (ICSID Case No. UNCT/23/4), Non-Disputing Party Submission of the Government of Canada Pursuant to NAFT Article 1128, 15 January 2025, ¶ 9; *Alberta Petroleum Marketing Commission v United States of America* (ICSID Case No. UNCT/23/4), United States of America's Memorial on its Preliminary Objections, 15 October 2024, ¶ 66, fns. 86-87; *Access Business Group LLC v. United Mexican States* (ICSID Case No. ARB/23/15), Non-Disputing Party Submission of the Government of Canada Pursuant to NAFTA Article 1128, 28 March 2025, ¶ 9; *Goldgroup Resources Inc. v Mexico* (ICSID Case No. ARB/23/4), Canada Submission pursuant to Article 1128 of NAFTA, 23 June 2025, ¶¶ 13-16.

[6] *Vienna Convention on the Law of Treaties* ("VCLT"), Article 31(3) reads as follows: "3. There shall be taken into account, together with the context:

> (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; […]."

[7] *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America* (ICSID Case No. ARB/21/63), Award, 12 July 2024, ¶¶ 199-207.

[8] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Art. 13, U.N. Doc. A/56/49(Vol. I)/Corr.4 (2001) ("ILC, Articles on Responsibility of States for Internationally Wrongful Acts").

in force at the time the measure is taken has been consistently recognized by international investment tribunals.[9] The NAFTA Parties cannot therefore be liable for an alleged violation of the NAFTA committed after the treaty was superseded by CUSMA.

B. CUSMA Annex 14-C Provides a Right to Bring a Claim for Breach only if the Breach Occurred Prior to July 1, 2020

12. CUSMA Annex 14-C prescribes the CUSMA Parties' limited consent to arbitrate claims pertaining to a "legacy investment" for a transition period of three years following CUSMA's entry into force. In particular, paragraphs 1 and 3 set out the scope of the CUSMA Parties' consent to arbitration:

> 1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:
>
> (a) Section A of Chapter 11 (Investment) of NAFTA 1994;
>
> (b) Article 1503(2) (State Enterprises) of NAFTA 1994; and
>
> (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.[10]
>
> […]
>
> 3. A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.

[9] *OOO Manolium Processing v. Republic of Belarus* (PCA Case No. 2018-06), Final Award, 22 June 2021, ¶ 269: ("The prohibition of retroactivity implies that the legality of a Member State's actions under the EEU Treaty can only be assessed if the Treaty was in force at the time the act was performed. This principle – which is considered "well established" and supported by State practice – is also reflected in Art. 13 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts of 2001"); *Mesa Power Group LLC v. Government of Canada* (PCA Case No. 2012-17), Award, 24 March 2016 ("*Mesa – Award*"), ¶ 325: ("State conduct cannot be governed by rules that are not applicable when the conduct occurs"); *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt* (ICSID Case No. ARB/04/13), Award, 6 November 2008, ¶ 133: ("The rule that acts are governed by contemporaneous law is also reflected in Article 13 of the ILC Articles on State Responsibility ("ILC Articles"), which rules out responsibility for an act in violation of an obligation not in effect at the time of the performance of the act").

[10] CUSMA Annex 14-C, paragraph 1 (footnotes 20 and 21 omitted).

13. Applying the general rule of treaty interpretation,[11] the ordinary meaning of the terms above, in their context and in light of the treaty's object and purpose, confirms that CUSMA Annex 14-C does not provide the Parties' consent to arbitrate an alleged breach of the NAFTA's substantive investment provisions that occurred *after* the NAFTA was terminated.

14. Paragraph 1 provides the CUSMA Parties' consent to arbitrate claims for alleged breaches of specific obligations of the NAFTA. This consent is limited to "the submission of a claim to arbitration", and, according to paragraph 3, expires three years after the termination of NAFTA. Paragraph 3 extends the Parties' consent for the procedural remedy; it does not extend Section A of NAFTA Chapters Eleven, Article 1502(3)(a) or Article 1503(2) beyond NAFTA's termination. The ordinary meaning of the terms is clear that the Parties' consent to bring a claim is extended, but there is nothing in the text of Annex 14-C that indicates the above substantive provisions continue to bind the Parties once CUSMA replaced the NAFTA.

15. Without providing investors an additional period to bring a NAFTA claim upon NAFTA's termination, CUSMA would have scuppered claims that had arisen prior to NAFTA's termination but had not yet been filed. Under the NAFTA, an investor had three years to submit a claim to arbitration from the date of actual or presumed knowledge of the alleged breach and resulting damage,[12] provided that it filed a Notice of Intent to submit a claim 90 days prior, *and* six months had elapsed since the events giving rise to the claim and its submission to arbitration.[13] Without the extension of consent in Annex 14-C, the CUSMA would have deprived the right of a NAFTA investor to bring a claim for a breach that had occurred when NAFTA was in force.

16. Relevant context confirms the interpretation of CUSMA Annex 14-C as not extending NAFTA Chapter Eleven's substantive obligations. For example, CUSMA

[11] VCLT, Article 31.

[12] NAFTA Articles 1116(2), 1117(2).

[13] NAFTA Articles 1119 and 1120.

Article 14.2.3 states that, "this Chapter, except as provided for in Annex 14-C […] does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement." Therefore, measures taken by a CUSMA Party prior to July 1, 2020, are subject only to NAFTA Chapter Eleven's substantive obligations, while measures taken after July 1, 2020, are subject to the substantive obligations of CUSMA Chapter 14. If the interaction between CUSMA Annex 14-C and Chapter 14's substantive obligations did not operate in this manner, the result would be that for a period of three years following CUSMA's entry into force, the CUSMA Parties would have been subject to distinct sets of substantive obligations vis-à-vis investors and investments of the other Parties, as well as distinct dispute settlement mechanisms, under separate international trade agreements.[14] Such a result would run counter to the Parties' intention to have CUSMA supersede the NAFTA, as articulated in the CUSMA Preamble: the Parties "REPLACE the 1994 North American Free Trade Agreement with a 21st Century, high standard new agreement".[15]

III. NAFTA ARTICLE 1119

A. Claimant Must Comply with the Pre-Requisites for Submitting a Claim to Arbitration in Order to Perfect the Consent of a NAFTA Party and Establish the Jurisdiction of the Tribunal

17. In order for a claimant to obtain the necessary consent to arbitrate pursuant to Article 1121(1) of the NAFTA, it must ensure that the claim is submitted to arbitration in "accordance with the procedures set out in this Agreement".[16] Compliance by the claimant

[14] CUSMA removed the trilateral investor-State dispute settlement ("ISDS") mechanism that existed under the NAFTA. Under CUSMA Annex 14-D and Annex 14-E, a limited ISDS mechanism remains only between the United States and Mexico, while only a State-to-State dispute mechanism is available for Canada.

[15] CUSMA Preamble, ¶ 3. *See also*, Protocol replacing the North American Free Trade Agreement with the agreement between Canada, the United States of America, and the United Mexican States ("1. Upon entry into force of this Protocol, the CUSMA, attached as an Annex to this Protocol, shall supersede the NAFTA, without prejudice to those provisions set forth in the CUSMA that refer to provisions of the NAFTA.") (emphasis added); Annex 14-C, ¶ 5 ("[…] the Tribunal's jurisdiction with respect to such a claim is not affected by the termination of NAFTA 1994") (emphasis added).

[16] NAFTA Articles 1121 and 1122 provide that a State Party's consent to arbitrate is conditional on the submission of a claim to arbitration in accordance with the procedures set out in the NAFTA and the investor's corresponding consent to arbitrate in accordance with those procedures.

with each of the NAFTA's prerequisites for submitting a claim to arbitration, including those set out in Articles 1116 to 1121, must be satisfied for a Chapter Eleven Tribunal to have jurisdiction over a claim. This has been confirmed by several NAFTA tribunals and has been the longstanding position of the three NAFTA Parties.[17]

18. Article 1119 requires a claimant to provide the respondent NAFTA Party with a written notice of its intent to submit a claim to arbitration at least 90 days before the submission of its claim to arbitration under Article 1120. In particular, Article 1119 requires that this written notice specify the identifying information of the claimant, the provisions of the NAFTA alleged to have been breached, the issues, the factual basis for the claim, and the relief sought and the approximate amount of damages claimed.[18] Together with the "cooling off" requirement in Article 1120(1), the notice requirements in Article 1119 afford a NAFTA Party time to identify and assess potential disputes, to coordinate among relevant government officials, and also provides an opportunity to redress the dispute before the claimant decides to submit the dispute to arbitration. These

[17] *Methanex Corporation v. United States of America* (UNCITRAL), Partial Award, 7 August 2002 ("*Methanex – Partial Award*"), ¶ 120: ("In order to establish the necessary consent to arbitration, it is sufficient to show (i) that Chapter 11 applies in the first place, i.e. that the requirements of Article 1101 are met, and (ii) that a claim has been brought by a claimant investor in accordance with Articles 1116 and 1117 (and that all pre-conditions and formalities required under Articles 1118-1121 are satisfied). Where these requirements are met by a claimant, Article 1122 is satisfied; and the NAFTA Party's consent to arbitration is established."); *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware Inc. v. Government of Canada* (UNCITRAL), Award on Jurisdiction and Liability, 17 March 2015, ¶ 229: ("The heightened protection given to investors from other NAFTA Parties under Chapter Eleven of the Agreement must be interpreted and applied in a manner that respects the limits that the NAFTA Parties put in place as integral aspects of their consent…"); *Merrill & Ring Forestry L.P. v. Government of Canada* (UNCITRAL), Decision on a Motion to Add a New Party, 31 January 2008, ¶¶ 28-29; *Canfor Corporation v. United States of America* (UNCITRAL), Decision on Preliminary Question, 6 June 2006 ("*Canfor – Decision*"), ¶ 171. This has been the longstanding position of the three NAFTA Parties – *see e.g., Resolute Forest Products Inc. v the Government of Canada* (UNCITRAL), Article 1128 Submission of the United States, 14 June 2017, ¶ 2: ("Under Article 1122, the scope of a NAFTA Party's consent to arbitrate an investment dispute is limited by the procedural conditions set out in Chapter Eleven."); *Mesa Power LLC v. Government of Canada* (UNCITRAL), Article 1128 Submission of Mexico, 25 July 2014, ¶ 4: ("Mexico considers that by entering into the Agreement, the NAFTA Parties made their consent to arbitration conditional upon compliance with the procedural requirements stipulated in Articles 1116, 1117, 1118, 1119, 1120, and 1121."); *KBR Inc. v. United Mexican States* (ICSID Case No. UNCT/14/1), Article 1128 Submission of Canada, 30 July 2014 ("*KBR – Canada's Article 1128 Submission*"), ¶ 3: ("Under Article 1122(1), the NAFTA Parties have offered consent to arbitrate with investors provided that certain conditions are met at the time the claim is submitted to arbitration.")

[18] NAFTA Article 1119(a) to (d).

requirements are also iterated in the Statement of the Free Trade Commission on Notices of Intent to Submit a Claim to Arbitration, which set out one way for claimants to ensure that the requirements of Article 1119 are met.[19] Any claim for which a claimant has not provided notice is not submitted in accordance with Article 1119, and thus does not satisfy the requirements of consent contained in Article 1122(1). Every individual claimant must ensure that it has satisfied these requirements, including the provision of notice under Article 1119.

19. A claimant cannot bring itself into compliance with Article 1119 after it has submitted its claim to arbitration under Article 1120. Article 1119 requires that notice be given "at least 90 days *before* the claim is submitted".[20] NAFTA and other international courts and tribunals have confirmed the general rule of international law that the jurisdiction of a tribunal is determined on the date on which the proceedings are instituted, not after.[21] As a result, a claimant cannot *ex post facto* create jurisdiction by giving notice under Article 1119 after the proceedings have been instituted, unless the respondent Party

[19] On October 7, 2003, the Free Trade Commission also issued a suggested format for notices of intent. While use of this format is not obligatory, following it is one way for claimants to ensure that the requirements of Article 1119 are addressed.

[20] NAFTA Article 1119 (emphasis added).

[21] *See e.g.*, *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, (formerly *Compañía de Aguas del Aconquija, S.A. and Compagnie Générale des Eaux v. Argentine Republic*) (ICSID Case No. ARB/97/3), Decision on Jurisdiction, 14 November 2005, ¶ 60: ("[I]t is generally recognized that the determination of whether a party has standing in an international judicial forum, for the purposes of jurisdiction to institute proceedings, is made by reference to the date on which such proceedings are deemed to have been instituted."); *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 February 2002, ¶ 26: ("The Court recalls that, according to its settled jurisprudence, its jurisdiction must be determined at the time that the act instituting proceedings was filed."); *Detroit International Bridge Company v. Government of Canada* (UNCITRAL), Award on Jurisdiction, 2 April 2015 ("*DIBC – Award*"), ¶ 321: ("[T]he Tribunal does not consider that the submission of such documents could retroactively validate several months of proceedings during which the Tribunal wholly lacked jurisdiction but had some kind of potential existence that might have been realized if it had acquired jurisdiction at some subsequent date. The lack of a valid waiver precluded the existence of a valid agreement between the disputing parties to arbitrate; and the lack of such an agreement deprived the Tribunal of the very basis of its existence.") *See also,* Christoph H. Schreuer, "The ICSID Convention: A Commentary", 2nd ed. (Cambridge: Cambridge University Press, 2009), p. 92: ("Apart from specific rules about critical dates, the date of the commencement of the proceedings is decisive. It is an accepted principle of international adjudication that jurisdiction will be determined by reference to the date on which judicial proceedings are instituted. This means that on that date all jurisdictional requirements must be met.")

provides its express consent to accept the claim regardless.[22] The agreement of all three NAFTA Parties on this point is clearly reflected in previous submissions of the Parties.[23]

IV. NAFTA ARTICLE 1116(1)

A. Claimant Must Demonstrate it was an Investor of a Party When the Alleged Breach Occurred

20. Article 1116(1) sets out one of the circumstances under which an "investor of a Party" may bring a claim under Section B of NAFTA Chapter Eleven.[24] Under Article 1116(1), an investor of a Party may, on its own behalf, bring a claim "that another Party has breached an obligation under: (a) Section A".[25] Accordingly, Article 1116(1) requires that a claim pertain to the alleged breach of an obligation under Section A.

21. Section A opens with Article 1101(1), the "gateway" to NAFTA Chapter Eleven,[26] which sets out the scope and coverage of the Chapter. Article 1101(1) circumscribes the

[22] *Railroad Development Corporation v. Republic of Guatemala* (ICSID Case No. ARB/07/23), Decision on Objection to Jurisdiction CAFTA Article 10.20.5, 17 November 2008 ("*Railroad Development – Decision on Jurisdiction*"), ¶ 61: ("[T]he Tribunal has no jurisdiction without the agreement of the parties to grant the Claimant an opportunity to remedy its defective waiver. It is for the Respondent and not the Tribunal to waive a deficiency under Article 10.18 or to allow a defective waiver to be remedied…"); *Methanex – Partial Award*, ¶ 93, where the challenge to the defective waiver submitted by the Claimant was amicably settled by the disputing parties.

[23] *See e.g.*, *B-Mex, LLC and Others v. United Mexican States* (ICSID Case No. ARB(AF)/16/3), Submission of the U.S., 28 February 2018, ¶ 7; *B-Mex, LLC and Others v. United Mexican States* (ICSID Case No. ARB(AF)/16/3), Submission of Canada, 28 February 2018, ¶¶ 8-9; *B-Mex, LLC and Others v. United Mexican States* (ICSID Case No. ARB(AF)/16/3), Memorial on Jurisdictional Objections, 30 May 2017, ¶ 77.

[24] NAFTA Article 1117(1) sets out the other circumstance where an investor of a Party may, "on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly", bring a claim.

[25] NAFTA Article 1116(1) provides in full, "An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under: (a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the investor has incurred loss or damage by reason of, or arising out of, that breach."

[26] *Methanex – Partial Award*, ¶ 106(i). *See e.g., Grand River Enterprises Six Nations, Ltd. and others v. United States of America* (UNCITRAL), Award, 12 January 2011, ¶¶ 76-80; *The Canadian Cattlemen for Fair Trade v. United States of America* (UNCITRAL) Award on Jurisdiction, 28 January 2008, ¶¶ 118-128; *Bayview Irrigation District and others v. United Mexican States* (ICSID Case No. ARB(AF)/05/1), Award on Jurisdiction, 19 June 2007, ¶ 85.

application the obligations of Section A and of the dispute settlement mechanism in Section B. In relevant part, it reads:

> 1. This Chapter applies to measures adopted or maintained by a Party relating to:
>
> (a) investors of another Party;
>
> (b) investments of investors of another Party in the territory of the Party;

22. The obligations contained in Section A thus apply to measures that "relat[e] to" investors of another Party and investments held by investors of another Party. Read together with Article 1116(1), a measure alleged to breach an obligation under Section A must "relat[e] to" the "investor of a Party" bringing the claim, or to the investments held by that "investor of a Party".[27] NAFTA tribunals have consistently required this connection between the claimant, its investments, and Article 1101(1).[28]

23. Accordingly, for a claim to meet the requirements of Articles 1101(1) and 1116(1), it must allege a breach of an obligation that applies to the "investor of a Party" bringing the claim or to the investments of that investor of a Party. If the investor of a Party did not exist or did not have an investment at the time of the challenged measure, then the threshold connection between the challenged measure and a claimant under Article 1101(1) cannot be met, and there are no substantive obligations in Section A that apply with respect to that claimant and its investments. Articles 1101(1) and 1116(1) therefore set a temporal

[27] NAFTA Chapter Eleven provides further guidance with respect to when a person or entity becomes an "investor of a Party". Article 1139 defines an "investor of a Party" as "a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment".

[28] *See e.g., Apotex Holdings Inc. and Apotex Inc. v. United States of America* (ICSID Case No. ARB(AF)/12/1) Award, 25 August 2014, ¶ 6.3: ("It is necessary to address [Article 1101(1)] within the context of NAFTA's Chapter Eleven and the Claimants' substantive claims in this arbitration. […] Accordingly, the [challenged measure] (as adopted and maintained by the Respondent) must relate to the Claimants as investors or to their investments in the territory of the USA within the meaning of NAFTA Article 1101(1)") and ¶¶ 6.22-6.24; *Resolute Forest Products Inc. v the Government of Canada* (UNCITRAL), Decision on Jurisdiction and Admissibility, 30 January 2008, ¶¶ 222 and 244 (under Article 1101(1) a measure must "have some specific impact on the claimant" or "directly address, target, implicate, or affect the Claimant"). *See also, Cargill, Incorporated v. United Mexican States* (ICSID Case No. ARB(AF)/05/2) Award, 18 September 2009, ¶ 175.

limitation on a tribunal's jurisdiction, and a claimant must demonstrate that it was an investor of a Party when the alleged breach occurred.[29]

V. NAFTA ARTICLE 1121

A. Claimant Must Comply with the Waiver Requirement in Article 1121 to Establish a NAFTA Party's Consent to Arbitration

24. Submitting and complying with the waiver requirements under Article 1121 is among the pre-requisites to establish the consent of a NAFTA Party to arbitrate. As numerous tribunals have held, a claimant's failure to comply with the waiver requirement means a tribunal lacks jurisdiction.[30] A claimant cannot *ex post facto* cure Article 1121 jurisdictional defects absent the express consent of the responding NAFTA Party.[31]

---

[29] NAFTA tribunals have also confirmed the temporal limitation imposed by Articles 1101(1) and 1116(1) and have found that they lacked jurisdiction ratione temporis where a claimant sought to make a claim concerning alleged breaches that pre-date its existence as a protected "investor of a Party." *See for e.g., Tennant Energy LLC v Government of Canada* (UNCITRAL), Final Award, 25 October 2022, ¶¶ 262, 267; *Mesa – Award*, ¶¶ 325-327; *Vito G. Gallo v. Canada* (UNCITRAL), Award, 15 September 2011, ¶¶ 284-297; *GAMI Investments, Inc. v. The Government of the United Mexican States* (UNCITRAL) Final Award, 15 November 2004, ¶ 93; and *B-Mex LLC and Others v. United Mexican States* (ICSID Case No. ARB(AF)/16/3), Partial Award, ¶ 145.

[30] *Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB (AF)/98/2) Arbitral Award, 2 June 2000 ("*Waste Management I – Award*"), p. 239; *DIBC – Award*, ¶¶ 291, 320, 336-337; *The Renco Group, Inc. v. The Republic of Peru* (UNCITRAL) Partial Award on Jurisdiction, 15 July 2016 ("*Renco – Partial Award*"), ¶ 73; *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador* (ICSID Case No. ARB/09/17) Award, 14 March 2011 ("*Commerce Group – Award*"), ¶¶ 79-80; *Railroad Development – Decision on Jurisdiction*, ¶ 56.

[31] *See e.g., Railroad Development – Decision on Jurisdiction*, ¶ 61: ("The Tribunal has no jurisdiction without the agreement of the parties to grant the Claimant an opportunity to remedy its defective waiver. It is for the Respondent and not the Tribunal to waive a deficiency under Article 10.18 or to allow a defective waiver to be remedied..."); *Methanex – Partial Award*, ¶ 93 (the challenge to the defective waiver submitted by the Claimant was amicably settled with the agreement of the United States); *See also, Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB (AF)/98/2), Counter-Memorial Regarding the Competence of the Tribunal of the United Mexican States, 5 November 1999 ("*Waste Management – Mexico Counter Memorial*"), ¶ 25: ("The NAFTA does not authorize a tribunal to cure a defect in a waiver after it has been constituted."); *Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB (AF)/98/2), Submission of the Government of Canada, 17 December 1999 ("*Waste Management – Canada Article 1128 Submission*"), ¶ 13: ("Failure to provide waivers in the form prescribed by Article 1121 cannot be cured *post facto.* Otherwise, if non-respect of the terms and purposes of Article 1121 bore no consequences it would render the article meaningless against the clear intention of the NAFTA Parties."). *See also, KBR – Canada's Article 1128 Submission*, ¶ 6.

25. NAFTA Articles 1116 to 1121 set the procedures claimants must follow to submit a claim to arbitration.[32] Article 1121, entitled "Conditions Precedent to Submission of a Claim to Arbitration," is a prerequisite to the formation of a valid arbitration agreement between the disputing investor and the NAFTA Party involved. Article 1121 stipulates that a claimant may submit a claim to arbitration "*only if*" the investor and its enterprise:

> [W]aive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.[33]

26. Under Article 1121, NAFTA claimants must waive the right to initiate or continue proceedings before any administrative tribunal or court under the law of any Party (i.e. Canada, the United States or Mexico) with respect to the respondent's measures that allegedly breach Chapter Eleven. The only exceptions allowed are those expressly set out in Article 1121 – proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of any Party.[34]

27. There is no consent to arbitration under Article 1122(1), and hence no jurisdiction for a NAFTA tribunal, unless a claimant complies with the conditions precedent to the submission of a claim to arbitration set out in Article 1121.[35] This includes a requirement for the claimant to file a valid waiver with its notice of arbitration and act consistently with

---

[32] *Methanex – Partial Award*, ¶¶ 120-121.

[33] NAFTA Article 1121(2)(b). Article 1121(1)(b) stipulates the same with respect to an investor submitting a claim on its own behalf under NAFTA Article 1116.

[34] *DIBC – Award*, ¶ 293.

[35] *Waste Management I – Award*, ¶¶ 14, 16. *See also, Commerce Group – Award*, ¶¶ 83-84, 102, 107, 115 (interpreting NAFTA Article 1121's equivalent provision in the Dominican Republic-Central America-U.S. Free Trade Agreement ("CAFTA-DR"), stating at ¶ 115: ("[i]f the waiver is invalid, there is no consent. The Tribunal, therefore, does not have jurisdiction over the Parties' CAFTA dispute."); *Railroad Development – Decision on Jurisdiction*, ¶ 56 (referring to CAFTA-DR's waiver provision: "the conditions set forth in Article 10.18 need to be met before the consent of the Respondent to arbitration is perfected."). *See also, KBR – Canada's Article 1128 Submission*, ¶ 5.

that waiver by abstaining from initiating or continuing domestic proceedings with respect to a measure alleged to breach the NAFTA.[36] This has been the longstanding position of the NAFTA Parties.[37]

28. Compliance with Article 1121 entails both formal and material requirements.[38] On the formal requirements, the waiver "must be clear, explicit and categorical".[39] On the material requirements, a claimant must act consistently and concurrently with the waiver by not continuing domestic proceedings for the payment of damages "with respect to the measure" alleged to breach NAFTA.[40] If a claimant or its enterprise[41] continues litigation

[36] *Waste Management I – Award*, ¶ 19. *See also*, *Commerce Group – Award*, ¶¶ 80-84 *stating at* ¶ 80: ("[a] waiver must be more than just words; it must accomplish its intended effect."). *See also*, *KBR – Canada's Article 1128 Submission*, ¶ 5.

[37] *See e.g.*, *Waste Management – Mexico Counter Memorial*, ¶¶ 25-30, 93-98; *Waste Management – Canada Article 1128 Submission*, ¶ 8: ("The investor has an obligation to waive its right to initiate or continue domestic legal proceedings concerning the measure which is alleged to be a breach of Chapter 11. It follows from a good faith interpretation of this obligation that the investor is required to act in conformity with the waiver that it is required to produce. In other words, the waiver must be made effective by the investor [...] [I]f the conditions spelled out by the NAF'TA Parties in Article 1121 are not met the NAFTA Party cannot be assumed to have consented to the arbitration and the Tribunal lacks jurisdiction to hear the case"); *Tembec Inc., Tembec Investments Inc. and Tembec Industries Inc.* v. *United States of America*, Objection to Jurisdiction of Respondent United States of America, February 4, 2005, p. 36: ("Compliance with Article 1121 requires that the claimant not only provide a written waiver, but that it act consistently with that waiver by abstaining from initiating or continuing proceedings with respect to the same measures in another forum. All three NAFTA Parties have confirmed in submissions to NAFTA tribunals that a claimant's failure to terminate parallel claims invalidates any purported waiver under Article 1121."); *Detroit International Bridge Company v. Canada* (UNCITRAL), Canada's Memorial on Jurisdiction, 15 June 2013 ("*DIBC – Canada's Memorial on Jurisdiction*"), ¶ 84; *Detroit International Bridge Company v. Canada* (UNCITRAL), Government of Canada Reply Memorial on Jurisdiction and Admissibility, 6 December 2013 ("*DIBC – Canada's Reply Memorial*"), ¶ 60; *Detroit International Bridge Company v. Canada* (UNCITRAL), Submission of the United States of America, 14 February 2014 ("*DIBC – U.S.A. Article 1128 Submission*"), ¶¶ 4-6; *Detroit International Bridge Company v. Canada* (UNCITRAL), Submission of Mexico Pursuant to Article 1128 of NAFTA, 14 February 2014 ("*DIBC – Mexico Article 1128 Submission*"), ¶ 8. *See also*, *KBR – Canada's Article 1128 Submission*, ¶ 5.

[38] *Renco – Partial Award*, ¶ 73; *Waste Management I – Award*, ¶ 20; *Commerce Group – Award*, ¶¶ 79-80.

[39] *Waste Management I – Award*, ¶ 18.

[40] *Waste Management I – Award*, ¶¶ 14, 20, 24; *Commerce Group – Award*, ¶¶ 79-80, 84, 102, 107.

[41] For a waiver to be and remain effective, any juridical persons that a claimant directly or indirectly owns or controls must abstain from initiating or continuing proceedings in another forum as of the date of filing the waiver (and thereafter) with respect to the measures alleged to violate NAFTA Chapter Eleven. To allow otherwise would permit a claimant to circumvent the formal and material requirements under Article 1121 through its enterprise, rendering the waiver provision ineffective. This would frustrate the purpose of Article 1121, as described herein.

with respect to the measure in another forum despite meeting the formal requirements of filing a waiver, the claimant has not complied with the waiver requirement.[42]

B. NAFTA Tribunals Concur "With Respect to the Measure" in Article 1121 Should be Interpreted Broadly

29. The phrase "with respect to the measure" in Article 1121 does not mean the "measures" challenged in the NAFTA case and other fora must be identical or that the legal basis for the challenge must be the same. The ordinary meaning of the phrase "with respect to" is "with reference or regard to something".[43] In describing Article 1121, Canada's NAFTA Statement of Implementation states that the investor and its enterprise must "waiver their right to initiate or continue legal proceedings […] concerning the measure in question."[44] The United States' NAFTA Statement of Administrative Action states, "Article 1121 requires the investor […] to waive the right to initiate or continue any actions in local courts or other *fora* relating to the disputed measure".[45]

30. The three NAFTA Parties agree that the phrase "with respect to" in Article 1121 should be interpreted broadly.[46] NAFTA tribunals concur. The *Waste Management I* tribunal stated:

---

[42] *Commerce Group – Award*, ¶ 115 (noting that the waiver was invalid and lacked "effectiveness" because claimants failed to discontinue domestic proceedings in El Salvador, so there was no consent of the respondent and the tribunal lacked jurisdiction); *see also, DIBC – Award*, ¶ 336.

[43] *Shorter Oxford English Dictionary*, *sub nom* "respect", Merriam-Webster, *sub nom* "respect" ("with respect to : with reference to : in relation to"). The equally authoritative French and Spanish texts of the NAFTA use similarly broad language. In French, "des procédures *se rapportant* à la mesure [...]" is used and means proceedings "relating to" or "in logical relation with." Loi de mise en œuvre de l'Accord de libre-échange nordaméricain, L.C. 1993, ch. 44. The Spanish text uses "respecto a la medida [...]" which means proceedings "respecting" the measure. El Tratado de Libre Comercio en America del Norte, Executive Decree of December 14, 1993, Diario Oficial, December 20, 1993. *See e.g., Canfor – Decision*, footnote 214 to ¶ 201 (citing use of "with respect to" in the French and Spanish versions of NAFTA).

[44] *North American Free Trade Agreement*, Statement of Implementation, Canada Gazette Part I, 1 January 1994), p. 154.

[45] *The North American Free Trade Agreement Implementation Act*, United States Statement of Administrative Action, p. 147.

[46] *KBR Inc. v. United Mexican States* (UNCITRAL), Final Award, 30 April 2015 ("*KBR – Award*"), ¶ 113: ("The Tribunal further observes that Respondent and the non-disputing NAFTA Parties concur in that the expression '*with respect to the measure*' should be broadly interpreted. Claimant has not disputed this view of the three NAFTA Parties. The Tribunal accepts that the formula 'with respect to' is wide. Its plain meaning

> For purposes of considering a waiver valid when that waiver is a condition precedent to the submission of a claim to arbitration, it is not imperative to know the merits of the question submitted for arbitration, but to have proof that the actions brought before domestic courts or tribunals directly affect the arbitration in that their object consists of measures also alleged in the present arbitral proceedings to be breaches of the NAFTA.[47]

31. A broad construction of "with respect to" is consistent with the purpose of Article 1121.[48] NAFTA and other tribunals confirm that Article 1121 aims to avoid the need for a respondent State to litigate concurrent and overlapping proceedings in multiple fora, as well as to minimize the risk of double recovery and to reduce the risk of conflicting outcomes (and thus legal uncertainty).[49]

---

is equivalent to 'relating to' or 'concerning,' terms used respectively in the United States' Statement of Administrative Action and Canada's Statement of Implementation."); *Canfor – Decision*, ¶ 201. *See also, DIBC – U.S.A. Article 1128 Submission*, ¶ 6 ("As the United States has previously argued, the phrase 'with respect to' in Article 1121(b) should be interpreted broadly."); *DIBC – Mexico Article 1128 Submission*, ¶ 8 ("Mexico agrees that all three Parties 'used the phrase 'with respect to' interchangeably with 'concerning'', which suggests a 'broad and general relationship.' Mexico also agrees with Canada's views expressed in this proceeding, that '[t]he ordinary meaning of the words 'with respect to' is 'as regards; with reference to,' not 'identical' or 'same as.'"); *DIBC – Canada's Memorial on Jurisdiction*, ¶ 94 ("The plain meaning of the term 'with respect to' is 'as regards; with reference to,' and is thus broad."); *DIBC – Canada's Reply Memorial*, ¶ 75 ("The ordinary meaning of the words 'with respect to' is 'as regards; with reference to,' not 'identical' or 'same as.' The NAFTA Parties could have chosen more restrictive language such as 'proceedings challenging the same measure of the disputing Party…' if that had been their intention. Instead, the NAFTA uses the more encompassing concept of proceedings, which are 'with respect to' the measure alleged to breach the NAFTA. Article 1121 is focused on the underlying actions of the respondent Party at issue, not the cause of action and 'not on the claims to which such a measure may give rise.'"); *Canfor Corporation v. United States of America* (UNCITRAL), Reply on Jurisdiction of Respondent United States of America, 6 August 2004, pp. 10-12; *KBR – Canada's Article 1128 Submission*, ¶¶ 8-9.

[47] *Waste Management I – Award*, ¶ 27 (emphasis added). *See also, KBR – Award*, ¶ 112: ("The *Waste Management I* tribunal points to the requirement that the *object* or better the subject matter of the parallel proceedings "*consist[] of measures also alleged in the present arbitral proceedings to be breaches of the NAFTA.*" In other words, the measure that is alleged to be a breach in the NAFTA arbitration must fall within the subject matter of the parallel domestic or international proceedings. This interpretation comports with the natural and plain meaning of Article 1121 of NAFTA.").

[48] *Waste Management I – Award*, ¶ 27 (emphasis added).

[49] *Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB(AF)/00/3), Decision of the Tribunal on Mexico's Preliminary Objection concerning the Previous Proceedings, 26 June 2002, ¶ 27; *International Thunderbird Gaming Corporation v. United Mexican States* (UNICTRAL) Arbitral Award, 26 January 2006, ¶ 118; *KBR – Award*, ¶¶ 116, 124. The tribunal in *Commerce Group* observed that the waiver provision permits other concurrent or parallel domestic proceedings where claims relating to different measures at issue in such proceedings are "separate and distinct" and the measures can be "teased apart." *See also, Commerce Group – Award*, ¶¶ 111-112.

32. Where a claimant fails to meet the formal and material requirements under Article 1121, the claimant cannot retroactively cure its non-compliance.[50] Nor can the tribunal remedy a defective waiver.[51] Instead, the discretion whether to permit a claimant to either proceed under or remedy an ineffective waiver lies with the respondent State, as a function of its general discretion to consent to arbitration.[52] This has been the longstanding position of the NAFTA Parties,[53] and affirmed by many tribunals.[54] Without a respondent's consent, a claimant cannot cure a defective waiver by discontinuing the impugned domestic proceedings. Instead, the tribunal must dismiss the claim for lack of jurisdiction.

[50] *KBR – Award*, ¶ 148: ("the practice of previous NAFTA tribunals adduced by the Parties in this case shows that the waiver may not be corrected in the course of the arbitration concerned unless the NAFTA Party consents to such correction."); *Bacilio Amorrortu v. Republic of Peru* (PCA Case No. 2020-11), Partial Award on Jurisdiction, 5 August 2022 ("*Bacilio – Partial Award on Jurisdiction*"), ¶ 237: ("The Claimant argues that, because the Tribunal has the power to allow him to amend or supplement the Notice of Arbitration and/or Memorial under the UNCITRAL Rules, this also includes the power to grant him leave to amend a defective waiver. The Tribunal is not persuaded. A tribunal's power to grant leave to amend or modify a notice of arbitration and/or statement of claim is part of the general power of a tribunal over arbitral proceedings. It is a matter of case management and sound administration of justice. In contrast, granting leave to cure a defective waiver, over the objection of the Respondent, would be tantamount to the Tribunal creating consent to arbitration where no such consent existed when the Tribunal was constituted. The Tribunal simply fails to see how, despite having been constituted on the basis of an invalid arbitration agreement, and hence not having jurisdiction over the Parties from the beginning of these proceedings, it could purport to exercise a power to cure the Claimant's defective waiver over the objection of the Respondent, and thereby endow itself with jurisdiction.") (Emphasis added) ¶ 265. *DIBC – Award*, ¶ 335.

[51] Once a tribunal is constituted, a defective waiver cannot be remedied by a claimant or by the tribunal as the tribunal would have been constituted before the proper submission of the claim to arbitration and without the consent of the respondent State as contemplated in Article 1121. *See e.g., DIBC – Award*, ¶ 321. *See also, Railroad Development – Decision on Jurisdiction*, ¶ 61; *KBR – Award*, ¶ 148; *Bacilio – Partial Award on Jurisdiction*, ¶¶ 237, 265; *Renco – Partial Award*, ¶ 173; *Waste Management I – Award*, ¶ 31.

[52] *Renco – Partial Award*, ¶ 173; *Railroad Development - Decision on Jurisdiction*, ¶ 61; *W*aste *Management I – Award*, ¶ 31.

[53] *See e.g., Waste Management – Mexico Counter Memorial*, ¶¶ 25-30, 93-98; *Waste Management – Canada Article 1128 Submission*, ¶¶ 8 and 11; *Tembec Inc., Tembec Investments Inc. and Tembec Industries Inc. v. United States of America*, Statement of Defense on Jurisdiction of Respondent United States of America, 15 December 2004, ¶¶ 8-10; *DIBC – Canada's Memorial on Jurisdiction*, ¶¶ 81-85; *DIBC – Canada's Reply Memorial*, ¶ 60; *DIBC – U.S.A. Article 1128 Submission*, ¶¶ 4-7; *DIBC – Mexico Article 1128 Submission*, ¶¶ 5, 18; *KBR – Canada's Article 1128 Submission*, ¶¶ 3-6; *KBR Inc. v. United Mexican States* (ICSID Case No. UNCT/14/1), Submission of the United States of America, 30 July 2014, ¶¶ 2-4.

[54] *DIBC – Award*, ¶ 321. *See e.g., Railroad Development – Decision on Jurisdiction*, ¶ 61. *See also, KBR – Award*, ¶ 148; *Bacilio* – Partial Award on Jurisdiction, ¶¶ 237, 265.

July 15, 2025

Respectfully submitted
on behalf of Canada,

[Signed]

_____

Heather Squires
Jaena Kim

Global Affairs Canada
Trade Law Bureau
125 Sussex Drive
Ottawa, Ontario
CANADA K1A 0G2