

# International Centre for Settlement of Investment Disputes

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## By fax

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## Re: Grand River Enterprises et al v. United States of America – NAFTA/UNCITRAL Arbitration Rules Proceeding

Dear Sirs and Mesdames,

The Tribunal has considered the simultaneous written Submissions of the parties of August 28, 2006, on the schedule for the future conduct of the proceeding, as well as the parties' respective comments thereon of September 8, 2006, and has asked that I communicate to you the following:

Paragraphs 95 to 102 of the Tribunal's Decision on Objections to Jurisdiction are quite clear and categorical: Recognizing that their claims regarding the allocable share amendments might not (or could not) be regarded as part of the claim as filed, it was the Claimants' Counsel who had orally submitted to the Tribunal (in Claimants' March 25, 2006 oral rebuttal arguments) that if the Tribunal found that these amendments were not covered with sufficient clarity in the Notice of Claim and Particularised Statement of Claim, "the claim should be (and would be) amended." Specifically, as noted in Paragraph 95 of the Decision, the Claimants' counsel had orally moved as follows:

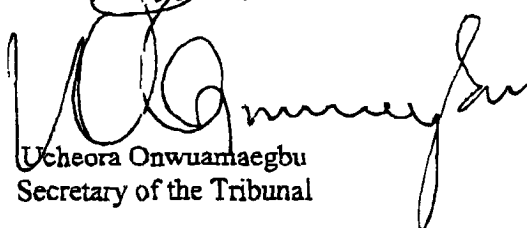
"[S]hould the Tribunal believe that it has no jurisdiction to hear the claim in the respect of the allocable share amendments, the Claimants hereby seek leave to amend the claim to add them as separate and distinct measures that did not breach the NAFTA, nor cause loss or damage until they came into force." (*TR Vol.3 page 1161, lines 9-18*).

It was this request that was acceded to by the Tribunal. The Claimants' oral motion to add claims with respect to the allocable share amendment was granted, and the Claimants' claims of breach of NAFTA directly arising out of the adoption and implementation of the allocable share amendments were reserved for consideration on the merits. (paragraph 104)

In the light of the Tribunal's decision in paragraph 104, the directions that are now given are as follows:

- (1) Within 45 days of today, i.e., by November 6, 2006, (November 5 being a Sunday) the Claimants shall file a statement of "Claimants' claims of Breach of NAFTA directly arising out of the adoption and implementation of the Allocable Share Amendments" - taking into account the Decision On Objections to Jurisdiction. The Claimants' statement must identify with precision the specific measures at issue, explaining how such measures violate all or any specified NAFTA obligations. The statement may include any clarifications of other claims over which the Tribunal has jurisdiction that Claimants wish to provide in light of questions raised at the March 2006 hearing and the Tribunal's Decision on Objections to Jurisdiction.
- (2) Within 45 days thereafter, i.e., by December 21, 2006, the Respondent shall file its Response to the Claimant's statement, setting out all additional arguments and submissions that the Respondent wishes to place on record.
- (3) Within 30 days thereafter, i.e., by January 22, 2007, (January 20 being a Saturday) each of the parties may file a request for documents in accordance with Article 3 of the IBA Rules of Evidence, as well as any request for additional forms of disclosure from the other party (such as interrogatories, depositions etc). The parties must define the nature of the information sought, clearly and with particularity, and describe why it is relevant and how it is material.
- (4) Within 15 days thereafter, i.e., by February 6, 2007, either party may file objections to requests for documents or additional forms of disclosure on grounds of non-compliance with Article 3, or privilege or any other relevant ground.
- (5) The Tribunal will decide on the request and objections under (3) and (4) above on the basis only of the parties' written submissions unless either party insists on an oral hearing as well.
- (6) Following consultation with the parties, the Tribunal will then set a schedule for the exchange of documentation and information.
- (7) Following the conclusion of the exchange of documentation and information as described above, the Claimants will file a Memorial, and the Respondent will file a Counter Memorial, for which a time schedule will be prescribed.
- (8) This will be followed by Oral Hearings to be fixed by the Tribunal, in consultation with the parties, sometime in the middle of 2007.

Sincerely yours,



Ucheora Onwuamaegbu  
Secretary of the Tribunal

cc: Members of the Tribunal