

August 10, 2010

By E-Mail

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Hon. Fern M. Smith
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Re: *Apotex Inc. v. United States of America*

Dear Members of the Tribunal:

The parties write jointly in response to Mr. Landau's letter of July 17, 2010, in which Mr. Landau agreed to serve as Presiding Arbitrator in the above-captioned arbitration brought under NAFTA Chapter 11.¹ Mr. Davidson and Judge Smith were appointed as arbitrators on October 23, 2009 and August 20, 2009 respectively.² This arbitration includes two claims submitted by Apotex Inc. against the United States of America, dated December 10, 2008 and June 4, 2009.³ For the convenience of the members of the Tribunal, the relevant contact information for all members is set out above.

¹ Letter from Toby T. Landau QC to the Parties (July 17, 2010) (attached).

² Letter from Lara E. FitzSimmons to Mark E. Feldman (Oct. 23, 2009) (attached); Letter from Mark E. Feldman to William A. Rakoczy (Aug. 20, 2009) (attached).

³ See Notice of Arbitration, *Apotex Inc. v. United States of America* (Dec. 10, 2008), available at: <http://www.state.gov/documents/organization/115447.pdf>; Notice of Arbitration, *Apotex Inc. v. United States of America* (June 4, 2009), available at: <http://www.state.gov/documents/organization/125291.pdf>.

The parties wish to inform the members of the Tribunal that they have reached agreement on the following procedural issues:

1. Place of Arbitration / Location of Hearings

New York, N.Y. shall be the legal place of arbitration. All hearings shall be held in Washington, D.C.

2. Language of Arbitration

The language of the arbitration shall be English.

3. Hearing Transcripts

All hearings shall be simultaneously transcribed using a live transcription software system with immediate dissemination to the parties and Tribunal.

4. Confidentiality / Transparency

All written submissions, hearing transcripts, orders and awards generated during the course of this arbitration shall be made available to the public, subject to the redaction of confidential or otherwise protected information as provided in the "Access to documents" section of the July 31, 2001, Note of Interpretation of the NAFTA Free Trade Commission ("FTC").⁴

Consistent with this objective, all hearings shall be broadcast to the public, via closed-circuit television broadcast or an alternative form of broadcast to be agreed upon by the parties, subject to arrangements to safeguard confidential or otherwise protected information.

5. Arbitration Rules

The UNCITRAL Arbitration Rules, as adopted in 1976, govern the arbitration except to the extent modified by Section B of NAFTA Chapter 11 (*see* NAFTA Article 1120(2)).

The IBA Rules on the Taking of Evidence in International Commercial Arbitration, as revised in 2010, apply to address evidentiary questions except as set forth above on issues related to confidentiality.

6. Administration

The International Centre for Settlement of Investment Disputes ("ICSID") shall administer the arbitration.

⁴ *See* NAFTA Free Trade Comm'n, Notes of Interpretation of Certain Chapter 11 Provisions, para. A(2)(b) (July 31, 2001), *available at*: <http://www.state.gov/documents/organization/38790.pdf>.

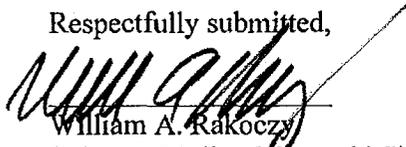
7. Arbitrator Fees

The schedule of fees referred to in Article 39(2) of the UNCITRAL Arbitration Rules is the ICSID fee schedule.⁵

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In addition, the parties request that each member of the Tribunal confirm in writing, consistent with Article 9 of the UNCITRAL Arbitration Rules, that the arbitrator is not aware of any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

Respectfully submitted,



William A. Rakoczy
Rakoczy Molino Mazzochi Siwik LLP
Counsel for Claimant



Mark E. Feldman
Chief, NAFTA/CAFTA-DR Arbitration
U.S. Department of State
Counsel for Respondent

Attachments:

Letter from Toby T. Landau QC to the Parties (July 17, 2010)

Letter from Lara E. FitzSimmons to Mark E. Feldman (Oct. 23, 2009)

Letter from Mark E. Feldman to William A. Rakoczy (Aug. 20, 2009)

⁵ The ICSID Schedule of Fees may be found at:
<http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=CaseScheduled>.