

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

First Majestic Silver Corp.

v.

United Mexican States

(ICSID Case No. ARB/21/14)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Giorgio Sacerdoti, President of the Tribunal

Prof. Stanimir A. Alexandrov, Arbitrator

Prof. Yves Derains, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

October 21, 2021

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Introduction

The first session of the Tribunal was held on September 24, 2021, at 10:23 a.m., Washington, D.C. time by videoconference. The session was adjourned at 12:57 p.m., Washington, D.C. time.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties on September 24, 2021.

Participating in the conference were:

Members of the Tribunal

Prof. Giorgio Sacerdoti, President of the Tribunal

Prof. Stanimir A. Alexandrov, Arbitrator

Prof. Yves Derains, Arbitrator

ICSID Secretariat:

Ms. Sara Marzal, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Riyaz Dattu, Arent Fox LLP

Mr. Tim Feighery, Arent Fox LLP

Mr. Lee Caplan, Arent Fox LLP

Mr. Raymond Polman, CFO, First Majestic Silver Corp.

Ms. Sophie Hsia, General Counsel, First Majestic Silver Corp.

Participating on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Secretaría de Economía.

Ms. Cindy Rayo Zapata, Secretaría de Economía.

Mr. Francisco Diego Pacheco Román, Secretaría de Economía.

Mr. Geovanni Hernández Salvador, Secretaría de Economía.

Mr. Miguel Ángel Galindo Vega, Secretaría de Economía.

Ms. Alicia Monserrat Islas Martínez, Secretaría de Economía.

Mr. Fabián Arturo Trejo Bravo, Secretaría de Economía.

Mr. Francisco Javier Ruiz Mejía, Secretaría de Economía.

Ms. Laura Mejía Hernández, Secretaría de Economía.

Ms. Erin Mireille Castro Cruz, Secretaría de Economía.

Mr. Gregory Tereposky

Ms. Jennifer Radford

Mr. Alejandro Barragán

Tereposky & DeRose LLP

Mr. Stephan E. Becker

Pillsbury Winthrop Shaw Pittman LLP

The Tribunal and the Parties¹ considered the following:

- The Draft Procedural Order circulated by the Secretary of the Tribunal on September 14, 2021; and
- The Parties' comments on the Draft Procedural Order No. 1 received on September 23, 2021-indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, and at the instructions of the Tribunal, on October 1, 2021, the Parties' submitted an updated timeline proposal for the production of document phase.

The Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex A**.

1. **Applicable Arbitration Rules**

NAFTA Article 1120; Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent that they are modified by Section B of NAFTA Chapter Eleven.

2. **Constitution of the Tribunal and Tribunal Members' Declarations**

NAFTA Article 1123; Arbitration Rule 6

- 2.1. The Tribunal was constituted on August 20, 2021 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.

¹ In this Order, the term "Parties" is used to refer to the Claimant and the Respondent in this proceeding, and the term "Party" is used to refer to either the Claimant or the Respondent. The Tribunal is mindful that Section B of Chapter 11 of the NAFTA refers to the Claimant and the Respondent together as the "disputing parties" and to either of them as a "disputing party." In this Order, the State signatories of the NAFTA (United States, Mexico and Canada) will be referred to as "NAFTA Party" or the "NAFTA Parties," for clarity. The Tribunal is mindful that the NAFTA refers to its States signatories as "Party." NAFTA Non-Disputing Parties refers to Canada and the United States.

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2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on August 20, 2021.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

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5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling, other than the award or a decision on jurisdiction, has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every month.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Secretary of the Tribunal is Ms. Sara Marzal, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

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- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Sara Marzal
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-6434
Fax: + 1 (202) 522-2615
Email: smarzal@worldbank.org
Paralegal email: atsimberlidis@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:

Sara Marzal
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties

Arbitration Rule 18

- 8.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such designation.

For Claimant

Mr. Riyaz Dattu
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and
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Mr. Lee M. Caplan

For Respondent

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Ms. Cindy Rayo Zapata
Mr. Francisco Diego Pacheco Román
Mr. Geovanni Hernández Salvador
Mr. Miguel Ángel Galindo Vega
Ms. Alicia Monserrat Islas Martínez
Mr. Fabián Arturo Trejo Bravo
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alicia.islas@economia.gob.mx;
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javier.ruiz@economia.gob.mx;
laura.mejia@economia.gob.mx
erin.castro@economia.gob.mx
gtereposky@tradeisds.com;
vderose@tradeisds.com;
abarragan@tradeisds.com;
gjasa@tradeisds.com;
jradford@tradeisds.com;
stephan.becker@pillsburylaw.com

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- 8.2. In case of urgency or communication difficulties, emails can be address to the Claimant to the following email address only riyaz.dattu@arentfox.com and riyaz@dattulaw.com and to the Respondent to the following email address only dgcjci@economia.gob.mx.
9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of August 27, 2021, ICSID requested that each Party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on September 22, 2021, and Respondent's payment on October 5, 2021.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding
NAFTA Article 1130; Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. Washington, D.C., U.S.A., shall be the place of the proceeding.
- 10.2. The Tribunal shall hold in-person hearings at ICSID's headquarters in Washington, D.C., or at any other place that it considers appropriate and if the Parties so agree.
- 10.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.
11. Procedural Languages, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language. The same provision applies for procedural applications to the Tribunal.

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- 11.3. Any pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language, with no requirement of translation in the other language.
- 11.4. Documents, including attachments to pleadings, expert opinion and witness statements, filed in any other language other than the procedural languages must be accompanied by a translation into one of the procedural languages. If the accompanying document to the main pleadings, expert opinions and witness statements is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 11.5. Translations need not be certified unless there is a dispute as to the translation provided and the Party disputing the translation specifically requests a certified version.
- 11.6. Documents exchanged between the Parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.
- 11.7. Hearings shall be conducted in English and Spanish. Simultaneous interpretation from English into Spanish (or from Spanish into English) will be provided at either Party's request, in which case transcripts shall be taken in both procedural languages.
- 11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish language shall be interpreted into both English and Spanish, simultaneously if possible. Transcripts shall be produced in both procedural languages.
- 11.9. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), in which language will each witness or expert testify.
- 11.10. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.
- 11.11. The Tribunal shall make its orders or decisions in English or Spanish, with no requirement of translation into the other procedural language.

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11.12. The Tribunal shall render the award in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications
Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.

12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.

12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal once both Parties' communications are received.

12.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the Parties shall:

13.1.1. submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;² and

13.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.

13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

² Please note that the World Bank server does not accept emails larger than 25 MB.

- 13.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex B**).
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat at the address indicated at §8.1 or 7.3 above and to each Member of the Tribunal at the addresses indicated at §13.6 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 13.5. The Tribunal may also ask the Parties to provide hard copies of a core bundle of key documents that they plan to use during the Hearing.

13.6. The addresses of the Tribunal Members are as follows:

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via Cernuschi 1
Milan 20129
Italy
Tel.: +39 3483136019
gsacerdoti@cbmlaw.it

Prof. Stanimir A. Alexandrov
1501 K Street, N.W.
Suite C-072
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Prof. Yves Derains
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25 rue Balzac
Paris 75008
France
Tel.: + 33 (0)1 40 55 51 00
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- 13.7. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Secretary of the Tribunal by email.
- 13.8. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 14.1. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in **Annex A**.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration (2010) (“the IBA Rules”) shall guide the Tribunal and the Parties in relation to the production of documents in this case.
- 15.2. By the date set forth in Annex A, any Party may submit to the other Party a request to produce a limited number of specific documents or a narrow number or narrow categories of documents within the other Party’s possession, custody or control in accordance with the IBA Rules (“**Request for Documents**”). The Request for Documents shall be submitted to the opposing party (without copying the Secretary of the Tribunal) in Word format using the Redfern Schedule provided in **Annex C**. The Request for Documents shall identify with precision each document or narrow category of documents sought and establish its relevance to the case and materiality to the outcome.
- 15.3. In exceptional circumstances, the parties may seek leave from the Tribunal to request additional documents upon a showing that such extemporaneous request is justified by the discovery of a new fact that the requesting party did not know and that such ignorance could not have been prevented through the exercise of due diligence. Before ruling, the Tribunal shall hear any observations the requested party may have.
- 15.4. To the extent that a Party considers that a requested document or category of documents is not subject to production (a “**Disputed Request**”), the following procedure shall apply:
 - 15.4.1. The Party that has received a Request for Documents shall submit its objections to the requesting party (without copying the Secretary of the Tribunal) by the date specified in Annex A;
 - 15.4.2. Objections to the production of a document or category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules;
 - 15.4.3. The requesting party shall reply to the objections to produce by the date specified in Annex A; and

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- 15.4.4. The reply to the objections shall be included in the Redfern Schedule containing the requests and the objections and shall be submitted in Word format to the opposing party and the Secretary of the Tribunal.
- 15.5. Disputed Requests will be decided by the Tribunal on a case-by-case basis, as soon as possible, upon receipt of the reply to the objections.
- 15.6. The Tribunal's decision on Disputed Requests will be included in the same Redfern Schedule containing the request, objections and reply, using the column or row reserved for that purpose.
- 15.7. Documents or categories of documents pertaining to undisputed requests shall be produced by the due dates indicated in Annex A.
- 15.8. Documents or categories of documents pertaining to Disputed Requests shall be produced by the date indicated in Annex A.
- 15.9. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel or native format whenever possible.
- 15.10. The requested documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, such as share platforms, and shall not be sent to the Tribunal Secretary.
- 15.11. Documents produced in response to a Request for Documents will not be part of the record, unless they are included as exhibits to a written submission or as an annex to a witness statement or expert report.
- 15.12. The Tribunal may, where appropriate, make necessary arrangements to protect the confidentiality of documents produced.
- 15.13. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.

16.2. The documents shall be submitted in the manner and form set forth in §13 above.

16.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.

16.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. The documents shall be submitted in the following form:

16.5.1. Exhibits and Legal Authorities shall be numbered consecutively throughout these proceedings.

16.5.2. The number of each document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.

16.5.3. Exhibits and legal authorities shall be submitted in PDF format and start with number “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-

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ENG/SPA for a document submitted simultaneously in English and Spanish.

16.5.4. The number of the exhibit or legal authority shall appear on the first page of the document and shall be incorporated into the file name in accordance with the naming convention referred at § 16.5.3 and 16.5.6.

16.5.5. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.

16.5.6. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex B**.

16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.

16.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.

16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimant, and “RD-” for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24

17.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.

17.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §16.3).

17.3. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

18.1. A Party may be called upon by the opposing Party to produce at the hearing for cross-examination any factual or expert witness whose written testimony or report has been advanced with the pleadings.

18.2. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.

18.3. Each Party shall notify the opposing party which witnesses and experts it intends to call for cross-examination on the date established in Annex A. The Tribunal shall promptly thereafter indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.

18.4. Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witness and experts shall make a declaration of truthfulness.

18.5. Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness or expert may conduct a brief direct examination at the hearing, limited to the content of their corresponding witness statement or expert report.

18.6. Subject to the discretion of and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion.

18.7. Re-direct examination shall be limited to the subjects of cross-examination.

18.8. Witnesses of fact shall be allowed in the hearing room after having given their oral evidence. Experts shall be allowed in the hearing room at any time.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a tele or video conference between the Tribunal, or its President, and the Parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings
Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. An in-person hearing shall be held at ICSID's headquarters in Washington, D.C., or at any other place the Tribunal considers appropriate if the Parties so agree, as indicated in §10.2 above. Hearings may be held, in whole or in part, instead than in-person, via videoconference, as determined by the Tribunal after consultation with the Parties should the Tribunal find that an in-person hearing would not be practicable or safe or for other good cause shown.

20.3. The date of the hearing shall be determined at a later stage.

20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. The total hearing time shall be split evenly between the parties, subject to the time the Tribunal intends to reserve for itself for questions and other matters. Time shall be documented and measured using a chess clock with the Secretary of the Tribunal responsible for timekeeping.

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- 20.6. The Tribunal shall make provisions for representatives of the non-disputing NAFTA Parties to attend the hearing upon request. Opening of the hearing to other persons shall be governed by ICSID Arbitration Rule 32.2.
- 20.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
- 20.7.1. A chronology of relevant facts in tabular form;
- 20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- 20.7.3. A list of the substantive issues required to be determined by the Tribunal.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Audio recordings shall be made of all hearings and sessions. The audio recordings shall be provided to the Parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 21.3. The Parties shall agree on any corrections to the transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“Revised Transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties. The Tribunal will decide on the Parties’ deadline to agree on any corrections at the conclusion of the hearing after consulting with both Parties.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. At the conclusion of the hearing, the Tribunal shall decide after consulting with the parties, whether, by when and under what conditions any post hearing submissions may be required, and when cost submissions are to be made.

23. Publication and Confidentiality

NAFTA Article 1137.4 and Annex 1137.4; FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents; Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

23.1. Section A (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued on July 31, 2001, shall apply to the treatment of documents in these proceedings.

23.2. The procedures for the protection of confidential, privileged or otherwise protected information shall be established in a subsequent Procedural Order by the Tribunal after consultation with the Parties (the “Confidentiality Order”).

23.3. In light of NAFTA’s relevant documents, the Parties hereby give their advance consent to the publication by ICSID of any decision on jurisdiction or liability and of the award on its website, taking into due account the need to redact any information that has been labelled as confidential, privileged or otherwise protected in accordance with §23.2 above.

23.4. Each Party shall be at liberty to make any order, decision, award of the Tribunal and any of its own filing and pleading public by uploading it on its website or otherwise, with due respect of the protection of the information referred to in §23.2.

24. Non-Disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

24.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in Annex A.

24.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, Non-Disputing NAFTA Parties may attend oral hearings, and are entitled to receive a copy of confidential versions of transcripts, written submissions and exhibits, including witness statements and expert reports. Non-Disputing NAFTA Parties shall be made aware of the Confidentiality Order, and pursuant to Article 1129 of the NAFTA, shall treat all information received from the Respondent as if they were a disputing Party, notably in respect of protection of confidential information.

24.3. The disputing Parties shall have the opportunity to comment on any Article 1128 submission by the date set forth in Annex A.

25. *Amicus Curiae* Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; Arbitration Rule 37(2)

25.1. If a request for the submission of an *amicus curiae* brief is filed by the date indicated in Annex A, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 37(2) and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003.

25.2. By the relevant dates indicated in Annex A, the disputing Parties shall have the opportunity to: (1) make submissions on any request for the submission of an *amicus curiae* brief; and (2) file simultaneous observations on issues raised in any *amicus curiae* brief submitted pursuant to a decision of the Tribunal.



Prof. Giorgio Sacerdoti
President of the Tribunal
Date: October 21, 2021

Annex A
Procedural Calendar

SCENARIO 1: NO PRELIMINARY OBJECTIONS OR PRELIMINARY OBJECTIONS WITHOUT REQUEST BIFURCATION

Date	Lapse (in days)	Party / Tribunal	Description
Wednesday, March 23, 2022	180 days from First Session	CLAIMANT	Memorial
Monday September 19, 2022	180 days from Memorial	RESPONDENT	Counter-Memorial on the Merits [and Memorial on Preliminary Objections]
DOCUMENT PRODUCTION			
Wednesday November 9, 2022	51 days from Counter- Memorial on the Merits [and Memorial on Preliminary Objections]	CLAIMANT AND RESPONDENT	Request for Production of Documents
Friday December 9, 2022	30 days from Request for Production of Documents	CLAIMANT AND RESPONDENT	Production of Non- Contested Documents Responses and/or Objections to the Request for Production of Documents

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Date	Lapse (in days)	Party / Tribunal	Description
Friday December 23, 2022	14 days from Responses and/or Objections to the Request for Production of Documents	CLAIMANT AND RESPONDENT	Reply to Objections to the Request for Production of Documents – Sent to Tribunal
Monday January 23, 2023	31 days from Reply to Objections to the Request for Production of Documents sent to Tribunal	TRIBUNAL	Decision on Production of Documents
Wednesday, February 22, 2023	30 days from Decision on Production of Documents	CLAIMANT AND RESPONDENT	Production of Documents Ordered by the Tribunal
Friday June 2, 2023	100 days from Production of Documents Ordered by the Tribunal	CLAIMANT	Reply on the Merits [and Counter- Memorial on Preliminary Objections]
Monday September 11, 2023	101 days from Reply on the Merits [and Counter-Memorial on Preliminary Objections]	RESPONDENT	Rejoinder on the Merits [and Reply on Preliminary Objections]
Friday, November 10, 2023	60 days from Rejoinder on the Merits [and Reply on Preliminary Objections]	CLAIMANT	[Rejoinder on Preliminary Objections]

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Date	Lapse (in days)	Party / Tribunal	Description
Friday November 17, 2023	7 days from [Rejoinder on Preliminary Objections]	-	Applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any
Friday November 17, 2023	7 days from [Rejoinder on Preliminary Objections]	-	Submissions under NAFTA Article 1128, if any
Friday December 1, 2023	14 days from Applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	CLAIMANT AND RESPONDENT	Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any
Friday December 8, 2023	21 days from Submissions under NAFTA Article 1128, if any	CLAIMANT AND RESPONDENT	Comments on NAFTA Article 1128 submissions
Friday December 15, 2023	14 days from Parties' comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TRIBUNAL	Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any
Friday January 12, 2024	4 weeks from Tribunal's decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	CLAIMANT AND RESPONDENT	Claimant's and Respondent's comments on non-disputing party (<i>amicus</i>) submissions, if any are admitted by the Tribunal
TBD	6 weeks before the Hearing	CLAIMANT AND RESPONDENT	Witness/Expert Notification
TBD	30 days before the Hearing	ALL	Pre-Hearing Organizational Meeting

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Procedural Order No. 1

Date	Lapse (in days)	Party / Tribunal	Description
TBD	30 days from Pre-Hearing Organizational Meeting	ALL	Hearing

SCENARIO 2: PRELIMINARY OBJECTIONS WITH REQUEST FOR BIFURCATION

Date	Lapse (# days)	Party / Tribunal	Description
Wednesday, March 23, 2022	180 DAYS FROM FIRST SESSION	CLAIMANT	Memorial
Friday May 12, 2023	50 DAYS FROM MEMORIAL	RESPONDENT	Request for Bifurcation
TBD	[TBD] DAYS FROM MEMORIAL ON PRELIMINARY OBJECTIONS AND REQUEST FOR BIFURCATION	CLAIMANT	Observations on Request for Bifurcation
TBD	[TBD] DAYS FROM OBSERVATIONS ON REQUEST FOR BIFURCATION	TRIBUNAL	Decision on Request for Bifurcation

The Tribunal shall determine, in consultation with the Parties, the remainder of the procedural calendar after the expiration of the deadline for the filing of the Request for Bifurcation.

Annex B
Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files, and for the accompanying consolidated Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication shall be reflected both (i) in the name of each individual electronic file and (ii) in the consolidated Index (which shall be attached to each submission).

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-ENG</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION	
Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-ENG</i>
	<i>R-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-SPA</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-ENG</i>
	<i>RL-0002-SPA</i>
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>

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Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-ENG</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-SPA</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-####-LANGUAGE
	For exhibits filed with the Witness Statement of [Maria Jones]
	<i>MJ-0001-ENG</i>
	<i>MJ-0002-SPA</i>
	For exhibits filed with the Expert Report of [Lucia Smith]
	<i>LS-0001-ENG</i>
	<i>LS-0002-SPA</i>
	For exhibits filed with the Legal Opinion of [Tom Kaine]
	<i>TK-0001-ENG</i>
<i>TK-0002-SPA</i>	
INDICES (Consolidated Index)	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RL-### to RL-###
	<i>Index of Legal Authorities-RL-0001 to RL-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-[Respondent]-SPA</i>
	<i>Request for Bifurcation-[Respondent]-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-[Respondent]-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submission-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex C
Redfern Schedule

No.	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Tribunal's Decision