

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Goldgroup Resources, Inc.

Claimant

v.

United Mexican States

Respondent

(ICSID Case No. ARB/23/4)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Eduardo Zuleta, President of the Tribunal

Mr. Henri C. Álvarez, Arbitrator

Ms. Jean E. Kalicki, Arbitrator

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

Assistant to the President

Ms. María Marulanda Mürrle

November 9, 2023

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Introduction

The first session of the Tribunal was held on October 25, 2023, at 12 pm (Washington, DC time), by videoconference. The session was adjourned at 12:40 pm.

A 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.

Participating in the conference were:

Members of the Tribunal:

Prof. Eduardo Zuleta, President of the Tribunal
Mr. Henri C. Álvarez, Arbitrator
Ms. Jean E. Kalicki, Arbitrator

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Tribunal

On behalf of the Claimant:

Ms. Gabriela Álvarez Ávila, DLA Piper
Ms. Kiera Gans, DLA Piper
Ms. Irene Cuéllar Araiza, DLA Piper
Mr. Santiago Palomo Vila, DLA Piper

On behalf of the Respondent:

Mr. Luis Fernando Muñoz Rodríguez, Secretaría de Economía
Mr. Rafael Alejandro Augusto Arteaga Farfán, Secretaría de Economía
Mr. Alejandro Rebollo Ornelas, Secretaría de Economía
Mr. Jorge Escalona Gálvez, Secretaría de Economía
Mr. Oscar Manuel Rosado Pulido, Secretaría de Economía
Ms. Sofía Rene Hernández Rojas, Secretaría de Economía
Mr. Marco Antonio Vázquez Velasco, Secretaría de Economía
Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP
Mr. Gary J. Shaw, Pillsbury Winthrop Shaw Pittman LLP
Mr. Alejandro Barragán, Tereposky & DeRose LLP

The Tribunal and the Parties considered the following:

- The draft Procedural Orders No.1 and No.2 circulated by the Tribunal Secretary on September 26, 2023; and
- The Parties' comments on the draft Procedural Orders received on October 20 and 24, 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1, Article 1120(2) NAFTA

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022, except to the extent that they are modified by Section B, Chapter 11 of the NAFTA.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on September 6, 2023, 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.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on June 27, 2023, July 17, 2023, and September 6, 2023.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

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

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 in force at the time the fees and expenses are incurred.

4. Presence and Quorum

Arbitration Rule 33

- 4.1. The participation of all the members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When 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.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal will be dispatched electronically to the Parties. The certified copy of the Award will be dispatched electronically to the Parties and sent via *courier* to the address designated by each Party.

6. Power to Fix Time Limits

Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Jara Mínguez Almeida, Team Leader/Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Jara Mínguez Almeida
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-0831
Fax: + 1 (202) 522-2615
Email: jminguez@worldbank.org
Paralegal name: Paulina Alvarado
Paralegal email: palvarado@worldbank.org
ICSID case address: ARB/23/4@icsidcases.worldbank.org

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

Ms. Jara Mínguez Almeida
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building), 3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Assistant to the President

- 8.1. By letter of September 26, 2023, the President explained to the Parties that he considered that it would benefit the overall cost and time efficiency of the proceedings if the President had an assistant. The President proposed, with the approval of the other members of the Tribunal, that Ms. María Marulanda Mürrle be appointed as assistant to the President. Ms. Marulanda's *curriculum vitae* was distributed to the Parties.
- 8.2. The President further explained that the assistant would (i) undertake only such specific tasks as are assigned to her by the President, such as the marshaling of evidence, research of specific issues of law and organization of case documents; (ii) assist the Tribunal during its deliberations; and (iii) be subject to the same confidentiality obligations as the Members of the Tribunal and sign a declaration to that effect.
- 8.3. The Parties consented to the appointment of Ms. María Marulanda Mürrle as assistant to the President on the terms set out by letter of September 26, 2023.
- 8.4. The Parties also agreed that the Assistant would be reimbursed for expenses as described in the Secretariat's letter September 26, 2023.

9. Representation of the Parties
Arbitration Rule 2

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

For the Claimant

Ms. Gabriela Álvarez Ávila
Ms. Kate Brown de Vejar
Ms. Irene Cuéllar Araiza
Mr. Santiago Palomo Vila
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Tel.: +52 55 5261 1800

For the Respondent

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Mr. Luis Fernando Muñoz Rodríguez
Mr. Rafael Alejandro Augusto
Arteaga Farfán
Ms. Sofía Rene Hernández Rojas
Mr. Alejandro Rebollo Ornelas
Mr. Jorge Escalona Gálvez
Mr. Oscar Manuel Rosado Pulido
Subsecretaría de Comercio Exterior

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9.2. Following the date of signature of this Procedural Order, any intended change or addition by a Party to the above legal representatives shall be notified promptly in writing to the other Party, the Tribunal, and the Tribunal Secretary. Any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal. The Tribunal may withhold approval of any intended change or addition to a Party's legal representatives where such change or addition could compromise the composition of the Tribunal or the finality of any decision, order, or award (on the grounds of possible conflict or other like impediment).

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

10.1. 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.

10.2. Following registration of the Request for arbitration, by letter of March 7, 2023, ICSID requested that the Claimant pay US\$ 150,000 to cover the initial costs of the proceeding through the first session. ICSID received the Claimants' payment on April 6, 2023. Upon the constitution of the Tribunal, by letter of September 6, 2023, ICSID requested that the Parties pay US\$ 300,000 to defray the estimated costs of the subsequent phase of the proceeding. The payment made by the Claimant on April 6, 2023, is considered a partial payment toward that sum. ICSID received the Respondent's payment on October 16, 2023.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10.4. After the Award has been made, ICSID shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

11. Place of Proceeding and Hearings
Convention Articles 62 and 63; Arbitration Rule 32

11.1. Washington, D.C. shall be the place of the proceeding.

11.2. The Tribunal may hold in-person hearings at ICSID's headquarters in Washington, D.C., or at any other place that it considers appropriate after consultation with the Parties. The method of holding a hearing will be determined in accordance with §22.2.

11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11.4. The Award shall be deemed to be made at the place of the arbitration, regardless of where it is signed.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

12.1. English and Spanish are the procedural languages of the arbitration.

For Pleadings, Documents and Communications

12.2. The Tribunal and the Secretariat may communicate in either procedural language.

12.3. Any written requests or applications from the Parties may be filed in either procedural language. As expressly requested by the Tribunal, if the Parties file a written request in Spanish, they shall provide a courtesy English translation within 7 days thereafter.

12.4. Pleadings can be filed in either procedural language, provided that a courtesy translation of the relevant pleading to the other procedural language is filed within 20 days thereafter.

12.5. Expert opinions, witness statements, exhibits, legal authorities and any other supporting documents can be submitted in one procedural language. As expressly requested by the Tribunal, if the Parties file the expert opinions and witness statements in Spanish, they shall provide a courtesy English translation within the following 20 days.

12.6. As expressly requested by the Tribunal, the Party offering exhibits, legal authorities, or other supporting documents in a language other than English shall provide a courtesy translation in English within the following 20 days of its submission. It is sufficient to translate only the relevant part of the exhibit, legal authority or supporting document unless the Tribunal requires a fuller or a complete translation.

12.7. During the document production phase, requests, objections, and replies may be submitted in either procedural language. Nevertheless, as expressly requested by the Tribunal, if filed in Spanish, an English courtesy translation shall be filed within 7 days thereafter. Documents exchanged between the Parties pursuant to §16 below (Production of Documents) may be produced in the original language and need not be translated.

12.8. The original language of any submitted document will prevail, and if needed a corrected courtesy translation may be filed.

- 12.9. Translations need not be certified, unless the translation is disputed, and the Tribunal orders a Party to provide a certified translation. Each Party will bear the costs of its own translations or as requested by the Tribunal subject to a subsequent award on costs.

For Hearing

- 12.10. The Parties will notify the Tribunal, as soon as possible, and no later than at the case management for hearing organization (see §20 below), which witnesses or experts require interpretation.
- 12.11. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language.
- 12.12. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English or Spanish shall be interpreted simultaneously into English and Spanish unless the Tribunal orders otherwise.
- 12.13. The costs of interpretation 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.

For Tribunal's Documents Except the Award

- 12.14. The Tribunal may make any order or decision in either procedural language.

For Tribunal's Award

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

13. Routing of Communications

Arbitration Rule 6

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. 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 and the Assistant.

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- 13.3. 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 and the Assistant.
- 13.4. 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.
- 13.5. The Parties and their representatives shall not engage in any oral or written communications with any Member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

14. Number of Copies and Method of Filing of Parties' Pleadings

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant filing date, the Parties shall 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.¹
- 14.2. Within the 3 days following the relevant filing date, the Parties shall upload the pleading, the witness statements, the expert reports, all the supporting documentation and the updated index of all the supporting documentation to the file sharing platform that has been created by ICSID for purposes of this case.²

- 14.3. The Tribunal reserves the right to request hard copies of certain lengthy pleadings and/or expert reports.
- 14.4. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 14.5. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of 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, the language of the document, and shall follow the naming conventions contained in **Annex A**).
- 14.6. 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 upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Supporting documentation shall be uploaded as individual files, not in .zip format.

orders to date) with a consolidated hyperlinked index of all documents.³ The Parties shall also courier to each Member of the Tribunal at the addresses indicated at §14.9 below, a USB drive (PC and MAC compatible) containing an electronic copy of the entire case file with a consolidated hyperlinked index of all documents.

- 14.7. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.8. A filing shall be deemed timely if sent by a Party by midnight, Mexico City time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.
- 14.9. The addresses of the Tribunal Members are as follows:

Prof. Eduardo Zuleta	Mr. Henri C. Alvarez	Ms. Jean E. Kalicki
Arbitration Chambers	Vancouver Arbitration	Arbitration Chambers
45 Rockefeller Plaza, 20th Floor	Chambers	45 Rockefeller Plaza, 20th Floor
New York, NY, 10111	34424 Rockridge Place	New York, NY, 10111
United States of America	Mission, B.C., V2V 7N3	United States of America
+1 212 332 8558	Canada	+1-212 332 8558
	+1 604 506 7700	

15. Number and Sequence of Pleadings – Procedural Calendar
Arbitration Rule 30

- 15.1. The arbitration shall proceed in accordance with the Procedural Calendar attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party, on the Tribunal’s own initiative, or by mutual agreement of the Parties, decides that this Procedural Timetable requires amendment.
- 15.2. The written submissions shall be submitted in accordance with Arbitration Rule 30.

16. Production of Documents
Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. Each Party may request the production of a reasonable number of documents, or narrow categories of documents, relevant and material to the outcome of the dispute from the other Party in accordance with the procedural calendar for the arbitration. Requests for the production of documents shall be in writing and set forth reasons

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized folder to a designated sub-folder on to the BOX files sharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the applicable time limit.

- 16.2. If the requested Party objects to production, the following procedure shall apply:
- 16.2.1. The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection.
- 16.2.2. The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
- 16.2.3. The Parties shall submit all outstanding requests, objections, and responses to objections to the Tribunal for decision in tabular form pursuant to the model appended to this Procedural Order as **Annex C** (modified Redfern schedule). The Parties shall use the same format throughout their exchange of requests, objections, and responses.
- 16.2.4. The Tribunal shall rule on any outstanding requests and may for this purpose refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 in regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this procedural order, the Arbitration Rules or NAFTA Chapter 11. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 16.2.5. The Parties shall not copy the Tribunal on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the Parties in response to document production requests shall only form part of the evidentiary record if a Party subsequently submits them as exhibits to its written submissions or upon authorization of the Tribunal after the exchange of submissions.
- 16.2.6. Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced, taking into consideration all relevant circumstances.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. 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.

- 17.2. The documents shall be submitted in the manner and form set forth in §14, above.
- 17.3. 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 timely and reasoned written application followed by observations from the other Party.
- 17.3.1. 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.
- 17.3.2. 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 document.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.5. Documents shall be submitted in the following form:
- 17.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 17.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “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-ENG/SPA for a document submitted simultaneously in English and Spanish. 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 §17.5.4.
- 17.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.6. 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.

- 17.7. 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.
- 17.8. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record.
- 17.9. An electronic copy of each demonstrative exhibit, other than PowerPoint slides, shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunals, the Tribunal Secretary, the Assistant to the court reporter and to the interpreters as necessary at least one hour prior to the use of the electronic exhibit.
- 17.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX files sharing platform, designating each with the corresponding CD-__ or RD-__ number.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

- 18.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 18.2. 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 §17.3).
- 18.3. Each witness statement and expert report shall be signed and dated by the witness, and shall include all the information contemplated in Articles 4(5) and 5(2), respectively, of the IBA Rules on the Taking of Evidence in International Arbitration 2020.
- 18.4. It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare for examination at a hearing.

19. Examination of Witnesses and Experts

Arbitration Rule 38

- 19.1. 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 has been advanced with the Pleadings.
- 19.2. The Parties shall notify the opposing Party which witnesses and experts it intends to call for cross-examination by the date set forth in **Annex B**. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.
- 19.3. 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 oral procedure.
- 19.4. The Party presenting the witness may conduct a brief direct examination in order to introduce the witness and make any corrections to his or her witness statement. Exceptionally, upon justified application of a Party no later than 7 days after the date for notification of witnesses called for examination, or as soon as possible after allegedly new developments during the Hearing itself, and with leave from the Tribunal, a witness may be asked during the direct examination about new matters arising during the arbitration or from statements of the counterparty's witnesses and experts on which the witness has not had an opportunity to comment before to the extent that those new matters are related to issues addressed by the witness in his or her previous witness statement. The Tribunal will hear from both Parties before authorizing testimony on new matters in direct examination and will determine whether additional evidence or submissions may be filed by the Parties concerning the new matter.
- 19.5. In *lieu* of direct examination, an expert may present his or her report to the Arbitral Tribunal (potentially aided by a PowerPoint presentation), for no longer than 30 minutes. The presentation must be limited to the contents of the presenting expert's report. Exceptionally, upon justified application of a Party no later than 7 days after the date for notification of witnesses called for examination, or as soon as possible after allegedly new developments during the Hearing itself, and with leave from the Tribunal, the expert may include in its presentation new matters arising during the arbitration or from statements of the counterparty's witnesses and experts on which the expert has not had an opportunity to comment before to the extent that those new matters are related to issues addressed by the expert in his or her previous expert report. The Tribunal will hear from both Parties before authorizing the expert to include such new matters in the presentation and will determine whether

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additional evidence or submissions may be filed by the Parties concerning the new issue.

- 19.6. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.
- 19.7. The scope of cross-examination will be limited to matters addressed or presented in the corresponding Witness Statement or Expert Report or in the direct examination. Cross-examination shall also be permitted on matters for which the record demonstrates the witness has personal knowledge (e.g., documents he/she has authored or been sent, meetings attended).
- 19.8. The cross-examination will be followed by a re-direct examination by the other Party with respect to matters arising out of the cross-examination (if it so chooses).
- 19.9. There will be no further examination unless authorized by the Arbitral Tribunal.
- 19.10. Prior to their examination, witnesses shall not be present in the hearing, discuss the examination of any other witness who has already appeared before the Arbitral Tribunal, read any transcript of oral arguments or oral testimony or listen to or watch any audio or video recording of the oral arguments or of the oral testimony.
- 19.11. Experts may be present in the hearing at all times.

20. Pre-Hearing Organizational Meetings

Arbitration Rule 31

- 20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a videoconference between the Tribunal and the Parties and address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 20.2. 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, which shall include the Parties’ proposals regarding the order in which the witnesses and experts will be called.

21. Case Management Conferences

Arbitration Rule 31

21.1. The Tribunal may convene, on its own initiative or if the Parties so request, case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 in order to (i) identify uncontested facts (e.g., joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., address tribunal questions, decision tree, road map, matrix and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., appointment of Tribunal-appointed expert, production of evidence).

22. Hearings

Arbitration Rule 32

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

22.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §11.1 above.

22.3. Having due regard to the views of the Parties and the specific circumstances of the case, the Tribunal may decide to hold a hearing remotely or in a hybrid form.

22.4. The hearing shall take place on the date set forth in **Annex B**. The Tribunal considers that for a proper preparation of the hearing no less than 8 weeks are required between the last written submission and the hearing. If as a result of amendments to the procedural calendar the term between the last submission and the hearing is reduced to less than 8 weeks the Tribunal may, after consulting the Parties, postpone the hearing.

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

22.6. Allocation of time and other procedural issues related to the hearing will be discussed by the Parties and the Tribunal in a later stage.

22.7. Hearings shall be closed to the public. However, provisions shall be made for representatives of the other NAFTA Parties to attend the hearing upon request.

22.8. 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:

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- 22.8.1. A chronology of relevant facts in tabular form;
- 22.8.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- 22.8.3. A list of the substantive issues required to be determined by the Tribunal.

23. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.
- 23.2. 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 and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 23.3. The Parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and 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 court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 24.1. After consultation with the Parties, the Tribunal shall determine whether post-hearing briefs are necessary and, if so, shall set the schedule and procedure for their submission. The statement of costs will be submitted by the Parties according to a schedule to be decided at the end of the hearing.

25. Transparency matters

Convention Article 48(5), Arbitration Rules 62-66, FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents

- 25.1. The Parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

- 25.2. For the sake of clarity, the Parties' pleadings and written submissions, witness statement, expert reports, transcripts, documentary evidence and legal authorities, or excerpts thereof, shall not be subject to publication.

26. Data Privacy and Cybersecurity

- 26.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 26.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 26.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

27. Amicable Dispute Settlement

- 27.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. If the Parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2).

28. Non-Disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

- 28.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in **Annex B**.
- 28.2. 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 any confidentiality measures, 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.

28.3. The Disputing Parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in **Annex B**.

29. *Amicus Curiae* Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; Arbitration Rule 67

29.1. If a request for the submission of an *amicus curiae* brief is filed by the date indicated in **Annex B**, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 67 and take into consideration the recommendation of the North American Free Trade Commission on Non-Disputing Party participation of 7 October 2003.

29.2. By the relevant dates indicated in **Annex B**, 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.

29.3. If either Party *intends* to rely at any hearing on a document referenced in an *amicus curiae* submission which is not already part of the record, that party must notify the other Party and the Tribunal at least 24 hours in advance of the intended use. The notice shall specify the reference number to be given to the document. If the notice is provided by email, an electronic copy of the relevant document shall be attached to the email, and a hard copy of the document shall be submitted in advance of its use at the hearing.

On behalf of the Tribunal,

[signed]

Prof. Eduardo Zuleta
President of the Tribunal
Date: November 9, 2023

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked 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 should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</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-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</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>
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-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to	WITNESS/EXPERT INITIALS–###

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Procedural Order No. 1 – Annex A

Witness Statements, Expert Reports, Legal Opinions	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-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-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Schedule

No.	Event	Parties/Tribunal	Time Interval	Date
1.	First Session	Both Parties and Tribunal	-	Wednesday, October 25, 2023
2.	Memorial on the Merits	Claimant	105 days from the First Session	Wednesday, February 7, 2024
3.	Counter-Memorial on the Merits	Respondent	105 days from the Memorial on the Merits	Wednesday, May 22, 2024
Document Production				
4.	Simultaneous exchange of document production requests	Both Parties	21 days from the Counter-Memorial on the Merits	Wednesday, June 12, 2024
5.	Simultaneous production of requested documents and objections to document production requests, where contested	Both Parties	21 days from the simultaneous exchange of document production requests	Wednesday, July 3, 2024
6.	Replies to objections to document production requests and applications to the Tribunal regarding document production	Both Parties	7 days from simultaneous production of requested documents and objections to document production requests, where contested	Wednesday, July 10, 2024

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7.	Decision on applications for Document Production	Tribunal	14 days from the Replies to objections to document production requests and applications to the Tribunal regarding document production	Wednesday, July 24, 2024
8.	Production of documents ordered by the Tribunal	Both Parties	14 days from the Decision on applications for Document Production	Wednesday, August 7, 2024
9.	Statement of Reply	Claimant	93 days from the Decision on applications for Document Production	Friday, October 25, 2024
10.	Rejoinder	Respondent	122 days from Statement of Reply	Monday, February 24, 2025
11.	Applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TBD	15 days from Rejoinder	Tuesday, March 11, 2025
12.	Submissions under NAFTA Article 1128, if any	TBD	15 days from Rejoinder	Tuesday, March 11, 2025
13.	Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Both Parties	15 days from deadline for applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Wednesday, March 26, 2025

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14.	Comments on NAFTA Article 1128 submissions	Both Parties	15 days from the comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Thursday, April 10, 2025
15.	Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any ⁴	Tribunal	15 days from comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions	Thursday, April 10, 2025
16.	Claimants' and Respondent's comments on non-disputing party (<i>amicus</i>) submissions	Claimants and Respondent	15 days from the Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Friday, April 25, 2025
17.	Notification of Witnesses each Party is calling for examination	Both Parties	18 days from Comments on NAFTA Article 1128 submissions	Monday, April 28, 2025
18.	Pre-hearing conference	Both Parties and the Tribunal		July 7, 2025 at 1:00 pm Washington, DC / 11:00 am Mexico City
19.	Hearing	Both Parties and the Tribunal		September 8 to 12, 2025
20.	Simultaneous filing of post-hearing brief	Both Parties	TBD	TBD

⁴ The Tribunal reserves the right to issue the reasons for its decisions in a later document.

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Procedural Order No. 1 – Annex B

21.	Simultaneous filing of submissions on costs	Both Parties	TBD	TBD
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Annex C- Model of Horizontal Schedule for Document Requests

Document Request No	
A. Documents or category of documents requested (requesting Party)	
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	
C. Reasoned objections to document request (objecting Party)	
D. Response to objections and request for resolution (requesting Party)	
E. Decision of the Tribunal	