

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Access Business Group LLC

v.

United Mexican States

ICSID Case No. ARB/23/15

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Prof. Franco Ferrari, Arbitrator

Ms. Loretta Malintoppi, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

Assistant of the Tribunal

Ms. Laura Zimmerman

8 December 2023

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Introduction

The first session of the Tribunal was held on **27 November 2023, at 9 a.m. EST**, by videoconference. The session was adjourned at 11.17 a.m. EST.

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.

Participating in the conference were:

Members of the Tribunal:

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Professor Franco Ferrari, Arbitrator
Ms. Loretta Malintoppi, Arbitrator

ICSID Secretariat:

Mr. Francisco Abriani, Secretary of the Tribunal

Assistant to the Tribunal:

Ms. Laura Zinnerman, Assistant to the Tribunal

On behalf of the Claimant:

Pedro J. Martinez-Fraga, BCLP
C. Ryan Reetz, BCLP
Kevin Cheung, BCLP
Robert Newmark, BCLP
June E. Foyo-Lorenzo, BCLP
Rainey Repins, Alticor Inc./Access Business Group LLC, VP & Deputy General Counsel

On behalf of the Respondent:

Mr. Alan Bonfiglio Ríos, Secretaría de Economía
Mr. Luis Fernando Muñoz Rodríguez, Secretaría de Economía
Ms. Sofía Rene Hernández Rojas, Secretaría de Economía
Mr. Jorge Escalona Gálvez, Secretaría de Economía
Mr. Óscar Manuel Rosado Pulido, Secretaría de Economía
Mr. Fabián Arturo Trejo Bravo, Secretaría de Economía
Mr. Alejandro Barragan, Tereposky & DeRose, LLP
Ms. Jennifer Radford, Tereposky & DeRose, LLP
Ms. Ximena Iturriaga, Tereposky & DeRose, LLP

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 14 November 2023; and
- The Parties' comments to the Draft Procedural Order received on 24 November 2023.

Following the session, 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

- 1.1. These proceedings are conducted in accordance with the procedural rules contained in the NAFTA, the ICSID Convention and the ICSID Arbitration Rules in force as of 1 July 2022.
- 1.2. The Claimant submits that the USMCA is applicable to these proceedings in addition to the instruments cited in §1.1, while the Respondent is of the view that only those instruments apply, to the exclusion of the USMCA. The reference to the USMCA in this Order is without prejudice to the Tribunal's later decision on the applicable procedural law.
- 1.3. The Tribunal may seek guidance from, but shall not be bound by, the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the "IBA Rules").

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on 20 October 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 20 October 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 Members of the Tribunal by any appropriate means of communication 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. No reasons need to be provided 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, including the certified copy of the Award, will be dispatched electronically to the Parties.
- 5.9. The Tribunal's rulings on procedural matters shall be communicated to the parties and may be informed by the Tribunal Secretary in the form of a letter or e-mail.

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.
- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in **Annex B** and (ii) the Tribunal is informed.
- 6.4. The Parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the Tribunal Secretary on the relevant date, or on the subsequent business day at the seat of the Centre if the time limit falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, the day of such announcement being excluded from the calculation.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Mr. Francisco Abriani, 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:

Mr. Francisco Abriani
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433

U.S.A.
Tel.: + 1 (202) 473-0274
Email: fabriani@worldbank.org
Paralegal name: Mr. Pedro Magariño
Paralegal email: pmagarino@worldbank.org
ICSID case address: arb/23/15@icsidcases.worldbank.org

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

Mr. Francisco Abriani
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 473-0274

8. Assistant to the Tribunal

8.1. By letter of 14 November 2023, the ICSID Secretariat, acting on instructions of the Tribunal, noted that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant, who would undertake the tasks described in that letter. In the same letter, the Tribunal proposed that Laura Zinnerman of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. Her *curriculum vitae* and declaration of independence and confidentiality were distributed to the Parties on 14 November 2023.

8.2. The Secretariat's letter also set out the tasks which may be assigned to the Assistant and noted that the Assistant was subject to the same confidentiality obligations as the Members of the Tribunal. The Assistant has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on 8 December 2023.

8.3. The Parties consented to the appointment of Ms. Zinnerman as Assistant to the Tribunal on the terms set out in the letter referred to in the preceding paragraph. The Parties also agreed that the Assistant would receive US\$ 280 for each hour of work performed and reimbursement of reasonable actual expenses on the same terms as the arbitrators.

8.4. The contact details of the Assistant are:

Laura Zinnerman
Lévy Kaufmann-Kohler
3-5 rue du Conseil-Général
P.O. Box 552

CH-1211 Geneva 4
Switzerland
Email: laura.zinnerman@lk-k.com

9. Representation of the Parties

Arbitration Rule 2

9.1. The Parties are represented by the following counsel and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation:

For the Claimant

Mr. Pedro J. Martinez-Fraga
Mr. C. Ryan Reetz
Mr. David A. Harford
Mr. Kevin Cheung
Mr. Robert Newmark
Ms. June Foyo-Lorenzo
Bryan Cave Leighton Paisner LLP
200 South Biscayne Boulevard, Suite
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kevin.cheung@bclplaw.com
rlnewmark@bclplaw.com
june.foyolorenzo@bclplaw.com

For the Respondent

Mr. Alan Bonfiglio Ríos
Mr. Luis Fernando Muñoz Rodríguez
Ms. Pamela Hernández Mendoza
Ms. Sofia Rene Hernández Rojas
Mr. Oscar Manuel Rosado Pulido
Mr. Fabián Arturo Trejo Bravo
Dirección General de Consultoría Jurídica
de Comercio Internacional
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and
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Mr. Alejandro Barragán
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Suite 1000, 81 Metcalfe Street
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Tel. +1 613 237 1210
Email:
gtereposky@tradeisds.com
abarragan@tradeisds.com

- 9.2. The Tribunal may refuse the designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.

10. Advance Payments to ICSID and Third-Party Funding

Article 11(2) and Article 10(5) of the BIT; Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50; Arbitration Rule 14

- 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 22 May 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 Claimant's payment on 2 June 2023. Upon the constitution of the Tribunal, by letter of 24 October 2023, ICSID requested that the Parties pay US\$300,000 to defray the estimated costs of the subsequent phase of the proceeding. Payment made by the Claimant on 2 June 2023 is considered a partial payment toward that sum. To date, ICSID has not received the Respondent's payment.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 10.4. In application of Arbitration Rule 14, each Party shall, immediately upon concluding a third-party funding arrangement, disclose to the Centre, the Tribunal and the other Party, that it has third-party funding, provide the name and address of the third-party funder and, if the third-party funder is a juridical person, provide the names of the persons and entities that own and control it. For the purpose of this provision, the term "third-party funder" does not include shareholders, parent or affiliated entities of a party.

- 10.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.

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 §11.3.
- 11.3. After consultation with the Parties, the Tribunal may determine that hearings will be conducted online through an appropriate videoconferencing platform. In such case, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 11.4. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English and Spanish shall be the languages of the arbitration.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat by itself or on behalf of the Tribunal may be in either procedural language.
- 12.3. The Tribunal may initially make any order or decision in English or Spanish and subsequently shall issue that order or decision in the other procedural language. Both versions of the order or decision shall be equally authentic.
- 12.4. The Tribunal shall render the Award in English and Spanish simultaneously. Both versions of the Award shall be equally authentic.
- 12.5. Any written requests, applications, pleadings, expert reports, witness statements, and accompanying documentation, documentary exhibits and legal authorities may be submitted in either procedural language, without translation in the other language if drafted in a language other than in English or Spanish shall be submitted with a translation into English or Spanish.

- 12.6. Translations of long documents can be limited to the relevant passages, provided the translated parts are sufficient for the reader to understand the context. The Tribunal may order a Party to provide a fuller or complete translation.
- 12.7. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 12.8. Documents drafted in a language other than English or Spanish which are exchanged between the Parties in document production under §16 below need not be translated.
- 12.9. The Hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 12.10. The Parties will notify the Tribunal, as soon as possible, and no later than at the case management conference for hearing organization, which witnesses or experts require interpretation.
- 12.11. The oral evidence of a witness given in a language other than the languages of the arbitration shall be interpreted simultaneously into English and Spanish.
- 12.12. 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.

13. Routing of Communications
Arbitration Rule 6

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Tribunal Secretary, the Tribunal Members, and the Assistant.
- 13.2. Communications to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party, the Tribunal Members, and the Assistant, once he has received both Parties' communications.
- 13.3. The Tribunal Secretary, Tribunal Members and Assistant shall not be copied on communications between the Parties.
- 13.4. The email addresses of the Members of the Tribunal are:

Prof. Gabrielle Kaufmann-Kohler:
gabrielle.kaufmann-kohler@lk-k.com

Prof. Franco Ferrari:
franco.ferrari@nyu.edu

Ms. Loretta Malintoppi:
Loretta.Malintoppi@39essex.com

- 13.5. The Parties and their representatives shall not engage in any oral or written communication with any Member of the Tribunal *ex parte* in connection with the arbitration.

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

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant time limit, a Party shall upload to the file sharing platform created by ICSID for purposes of this case an electronic version of the pleadings only.
- 14.2. Three business days thereafter, that Party shall upload the witness statements, expert reports, all documents appended to the witness statements and expert reports, factual exhibits, and legal authorities, and an index of all the supporting documentation attached to the pleading, witness statements and expert reports, to the ICSID platform.¹
- 14.3. Pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).
- 14.4. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted and follow the naming conventions contained in **Annex A**.
- 14.5. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, 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 and consolidated hyperlinked index of all documents.²
- 14.6. A filing shall be deemed timely if a Party meets the requirements set in §14.1 by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings

Arbitration Rule 30

- 15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.

² 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 filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

- 15.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases.
- 15.3. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing Party's last submission.
- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.5. All written submissions shall be divided into consecutively numbered paragraphs.
- 15.6. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The Tribunal shall be guided but not bound by Articles 3 and 9 of the IBA Rules.
- 16.2. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control, in the form of a Redfern Schedule as attached in **Annex C** hereto, in both Word and .pdf format. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
- 16.3. Each request for production shall:
 - 16.3.1. identify with specificity: (i) the type of documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as "all documents" or "all records", or use such formulation and then define it to "include" specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be). A Party asserting that such identification is not possible must adequately

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- substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;
- 16.3.2. describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;
- 16.3.3. specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and
- 16.3.4. explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.
- 16.4. The Tribunal recommends that the number of requests per Party do not exceed 35, including sub-requests. A Party wishing to exceed this number shall announce it two weeks before the date for submission of the Redfern Schedule, explaining the reasons and need for a number higher than recommended.
- 16.5. Within the time limit set forth in **Annex B**, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.6. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for the production of the documents sought and not produced, in which case it shall reply to the other Party's objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
- 16.7. The Parties shall make no submissions in respect of the steps set out in §§16.2, 16.5, and 16.6 above other than those incorporated in the Redfern Schedules.
- 16.8. On or around the date set forth in **Annex B**, the Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the requirements of §16.3, the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof. If a request does not meet the requirements of §16.3, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative.

- 16.9. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal, the Secretary, and the Assistant. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.
- 16.10. In addition, the Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on record.
- 16.11. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may deem that the document is adverse to the position of that Party, in light of all circumstances and taking into account the reasons advanced by a Party to explain its inability to produce any given document.
- 16.12. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. Documents, including exhibits and legal authorities, shall be submitted together with the memorial or written submission that refers to them in conformity with §§15.2 and 15.3 above.
- 17.2. Neither Party shall be permitted to submit additional or responsive documents after the filing of its last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.
 - 17.2.1. Should a Party request leave to file additional or responsive documents, it may not annex the documents that it seeks to file to its request.
 - 17.2.2. If the Tribunal grants such request, the Tribunal shall ensure that the other Party is afforded an opportunity to make its observations concerning such a document.
- 17.3. The documents shall be submitted in the following form:
 - 17.3.1. The number of each exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each exhibit containing a

document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.

- 17.3.2. Factual and legal exhibits shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001”, respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the electronic file name in accordance with §17.3.3.
- 17.3.3. Electronic files and the accompanying indices shall follow the naming conventions contained in **Annex A**.
- 17.4. 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.
- 17.5. 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.
- 17.6. Demonstrative exhibits, i.e. documents compiling information in the record but not in the form presented, such as charts, may be used at a hearing, provided they (i) contain no new evidence; (ii) identify their source in the record; (iii) are submitted to the other Party at the time specified in the relevant pre-hearing order; and (iv) are numbered consecutively with a number introduced by CD-, respectively RD-.

18. Witnesses

Convention Article 43(a); Arbitration Rule 38

- 18.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 18.2. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal.
- 18.3. Each witness statement shall state the witness’s name, date of birth, and involvement in the case.
- 18.4. Witness statements shall be submitted in English or Spanish.
- 18.5. In accordance with §§15.2 and 15.3 above, each Party will submit its witness statements together with its written submissions. Neither Party shall submit any

testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as “Second”.

- 18.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.7. On the date provided in **Annex B**, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine. A witness whose cross-examination is not sought shall not testify unless the Tribunal directs his or her appearance.
- 18.8. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.9. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the award.
- 18.10. If it deems it necessary, the Tribunal may call upon the Parties to produce as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.11. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.12. Examination by video conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.13. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 18.14. At the hearing, the examination of each witness shall proceed as follows:
 - 18.14.1. Witnesses shall make a declaration of truthfulness.
 - 18.14.2. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last

opportunity for the Party who presented the witness to file witness statements. In principle, it shall not exceed ten minutes;

- 18.14.3. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement, and the witness credibility;
 - 18.14.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
 - 18.14.5. The Tribunal may ask its questions at any time, likely mainly at the end.
- 18.15. Subject to other arrangements during the case management conference for hearing organization, (i) fact witnesses shall be examined prior to expert witnesses, the Claimant's fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimant's expert for each topic being examined first.
- 18.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions.
- 18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 18.17.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant;
 - 18.17.2. Direct that a witness be recalled for further examination at any time; or
 - 18.17.3. Provide that the witnesses may be examined together ("witness conferencing"), in which case it will give appropriate directions.

19. Experts

Arbitration Rule 38

- 19.1. The rules set forth in §18 above shall apply by analogy to experts, subject to different rules being set in this Section.

- 19.2. Each Party may retain and produce evidence of one or more experts.
- 19.3. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
- 19.4. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 19.5. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 19.6. In lieu of direct examination an expert may provide a brief presentation of his or her report for no longer than 30 minutes, subject to a different duration directed by the Tribunal after consultation of the Parties at the pre-hearing organizational meeting.

20. Case Management Conferences

Arbitration Rule 31

- 20.1. A case management conference for purposes of discussing hearing organization and logistics will be held on the date provided in **Annex B** by way of videoconference.
- 20.2. The Tribunal may convene other case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 if necessary or appropriate.

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall take place on the dates set in **Annex B**.
- 21.3. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.

- 21.4. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be discussed at the case management conference for hearing organization and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties, the Tribunal Members and the Assistant.
- 22.2. Verbatim transcripts in the procedural language shall be made of any hearing other than procedural sessions. 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.
- 22.3. The Parties shall agree on any corrections to the transcripts within a time limit to be fixed at the end of the hearing. The agreed corrections may be entered in the transcript by the court reporter ("revised transcripts"). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered in the revised transcript by the court reporter.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal.
- 23.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

24. Transparency

- 24.1. The transparency of these proceedings and its implementation, including exceptions to transparency and participation of non-disputing Contracting States or other non-disputing parties, shall be governed by a separate order that the Tribunal

will issue after consultation with the disputing Parties (“Procedural Order No. 2”).

- 24.2. ICSID may publish the fact of the existence of the arbitration, the names of the Parties, counsel representing the Parties and the Members of the Tribunal on its website.

25. Data Privacy and Cybersecurity

- 25.1. The Members of the Tribunal, the Assistant, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 25.2. 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.
- 25.3. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber security of arbitration-related information and the Parties confirm that communications may be sent by email.

26. Amicable Dispute Settlement

- 26.1. 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. The Parties may agree to suspend the arbitration for this purpose.
- 26.2. At any time in the course of the arbitration, considering the circumstances of the dispute and the interests at stake, the Tribunal may suggest to the Parties to resort to mediation or other appropriate methods of amicable resolution.
- 26.3. Beyond making a suggestion to the Parties, the Tribunal will not become involved in mediation or other settlement attempts and will continue the proceedings if the Parties do not agree to follow the Tribunal’s suggestion or if they agree but the attempt fails.

27. Disability Inclusion

- 27.1. At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

On behalf of the Tribunal,

[signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 8 December 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	CL-####–LANGUAGE
	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>

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Procedural Order No. 1 – Annex A

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<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>
	<i>LS-0002</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 – Procedural Timetable

Scenario 1: No request for bifurcation of preliminary objections

No.	Event	Author	Date	Interval
1.	Memorial on the Merits	Claimant	11 March 2024	105 days / 15 weeks
2.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	24 June 2024	105 days / 15 weeks
3.	Requests for Production of Documents	Parties	15 July 2024	21 days / 3 weeks
4.	(i) Submissions under NAFTA Article 1128 and USMCA Article 14.D.7(2), and (ii) applications for leave to file other non-disputing party (<i>amicus</i>) submissions (with submissions attached), if any	Non-disputing parties	22 July 2024	28 days / 4 weeks from Counter-Memorial
5.	Responses and/or Objections to Requests for Production of Documents	Parties	29 July 2024	14 days / 2 weeks from Requests for Production of Documents
6.	Replies to Objections to Requests for Production of Documents	Parties	8 August 2024	10 days / 1.43 weeks
7.	Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Parties	19 August 2024	28 days / 4 weeks from Applications for leave
8.	Production of Documents which are not subject to Objections	Parties	5 September 2024	28 days / 5 weeks from Replies to Objections
9.	Decision on Objections to Requests for Production of Documents	Tribunal	5 September 2024	0 days / 0 weeks
10.	Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	16 September 2024	28 days / 4 weeks from Comments on applications for leave
11.	Production of Documents ordered by Tribunal	Parties	19 September 2024	14 days / 2 weeks from Decision on Objections
12.	Reply on the Merits (and Counter-Memorial on Jurisdiction), including comments on, if any: (i) NAFTA Article 1128 and USMCA Article 14.D.7(2) submissions; and	Claimant	18 December 2024	90 days / 12.86 weeks

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No.	Event	Author	Date	Interval
	(ii) non-disputing party (<i>amicus</i>) submissions			
13.	Rejoinder on the Merits (and Reply on Jurisdiction), including comments on, if any: (i) NAFTA Article 1128 and USMCA Article 14.D.7(2) submissions; and (ii) non-disputing party (<i>amicus</i>) submissions	Respondent	21 April 2025	124 days / 17.7 weeks
14.	Rejoinder on Jurisdiction only, if any	Claimant	22 June 2025	63 days / 9 weeks
15.	Parties to identify witnesses and experts for cross-examination	Parties	14 July 2025	21 days / 3 weeks
16.	Pre-hearing CMC	Parties and Tribunal	11 August 2025	28 days / 4 weeks
17.	Hearing on Jurisdiction and Merits	Parties and Tribunal	15-19 September 2025 (with 22-24 September reserved)	
18.	Cost Statements	Parties	TBD end of Hearing	

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Scenario 2: Request for bifurcation filed but denied

No.	Event	Author	Date	Interval
1.	Memorial on the Merits	Claimant	11 March 2024	105 days / 15 weeks
2.	Identification of Preliminary Objections and Request for Bifurcation	Respondent	15 April 2024	35 days / 5 weeks
3.	Response to the Request for Bifurcation	Claimant	13 May 2024	28 days / 4 weeks
4.	Decision on Bifurcation (reasons to follow if necessary)	Tribunal	27 May 2024	14 days / 2 weeks
5.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	9 September 2024	105 days / 15 weeks
6.	Requests for Production of Documents	Parties	30 September 2024	21 days / 3 weeks
7.	(i) Submissions under NAFTA Article 1128 and USMCA Article 14.D.7(2), and (ii) applications for leave to file other non-disputing party (<i>amicus</i>) submissions (with submissions attached), if any	Non-disputing parties	7 October 2024	28 days / 4 weeks from Counter-Memorial
8.	Responses and/or Objections to Requests for Production of Documents	Parties	14 October 2024	14 days / 2 weeks from Requests for Production
9.	Replies to Objections to Requests for Production of Documents	Parties	24 October 2024	10 days / 1.43 weeks
10.	Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Parties	4 November 2024	28 days / 4 weeks from Applications for leave
11.	Production of Documents which are not subject to Objections	Parties	21 November 2024	28 days / 4 weeks from Replies to Objections
12.	Decision on Objections to Requests for Production of Documents	Tribunal	21 November 2024	0 days / 0 weeks
13.	Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	2 December 2024	28 days / 4 weeks from Comments on applications for leave
14.	Production of Documents ordered by Tribunal	Parties	5 December 2024	14 days / 2 weeks from Decision on Objections

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No.	Event	Author	Date	Interval
15.	Reply on the Merits and Counter-Memorial on Jurisdiction, including comments on, if any: (i) NAFTA Article 1128 and USMCA Article 14.D.7(2) submissions; and (ii) non-disputing party (<i>amicus</i>) submissions	Claimant	5 March 2025	90 days / 12.86 weeks
16.	Rejoinder on the Merits and Reply on Jurisdiction, including comments on, if any: (i) NAFTA Article 1128 and USMCA Article 14.D.7(2) submissions; and (ii) non-disputing party (<i>amicus</i>) submissions	Respondent	18 June 2025	105 days / 15 weeks
17.	Rejoinder on Jurisdiction only, if any	Claimant	30 July 2025	42 days / 6 weeks
18.	Parties to identify witnesses and experts for cross-examination	Parties	6 August 2025	7 days / 1 week
19.	Pre-hearing CMC	Parties and Tribunal	11 August 2025	5 days / 0.7 weeks
20.	Hearing on Jurisdiction and Merits	Parties and Tribunal	15-19 September 2025 (with 22-24 September reserved)	
21.	Cost Statements	Parties	TBD end of the Hearing	

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Procedural Order No. 1 – Annex B

Scenario 3: Request for bifurcation filed and granted

No.	Event	Author	Date	Interval
1.	Memorial on the Merits	Claimant	11 March 2024	105 days / 15 weeks
2.	Identification of Preliminary Objections and Request for Bifurcation	Respondent	15 April 2024	35 days / 5 weeks
3.	Response to the Request for Bifurcation	Claimant	13 May 2024	28 days / 4 weeks
4.	Decision on Bifurcation (reasons to follow if necessary)	Tribunal	27 May 2024	14 days / 2 weeks
5.	Memorial on Jurisdiction	Respondent	2 September 2024	98 days / 14 weeks
6.	Counter-Memorial on Jurisdiction	Claimant	9 December 2024	98 days / 14 weeks
7.	Parties to identify witnesses and experts for cross-examination, if any	Parties	20 December 2024	11 days / 1.57 weeks
8.	Pre-hearing CMC	Parties and Tribunal	15 January 2025	26 days / 3.7 weeks
9.	Hearing on Jurisdiction	Parties and Tribunal	12 February 2025 (with 13 February reserved)	

If the Tribunal upholds its jurisdiction, a new calendar will be set for the merits phase.

Annex C – Redfern Schedule

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			