

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Cyrus Capital Partners, L.P. and Contrarian Capital Management, LLC  
(Claimants)**

**v.**

**United Mexican States  
(Respondent)**

**(ICSID Case No. ARB/23/33)**

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**PROCEDURAL ORDER No. 1**

***Members of the Tribunal***

Rt. Hon. Lord Collins of Mapesbury, LLD, FBA, President of the Tribunal

Dr. David J.A. Cairns, Arbitrator

Prof. Zachary Douglas, KC, Arbitrator

***Secretary of the Tribunal***

Ms. Veronica Lavista

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3 April 2024

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**Introduction**

The first session of the Tribunal was held on 21 March 2024, at 1 p.m (ET), by video conference via Zoom. The session was adjourned at 1:40 p.m.

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:

Rt. Hon. Lord Collins of Mapesbury, President of the Tribunal

Dr. David J.A. Cairns, Arbitrator

Prof. Zachary Douglas, Arbitrator

ICSID Secretariat:

Ms. Veronica Lavista, Secretary of the Tribunal

On behalf of the Claimants:

Mr. Jonathan C. Poling, Akin Gump Strauss Hauer & Feld LLP

Mr. Stephen S. Kho, Akin Gump Strauss Hauer & Feld LLP

Ms. Katherine P. Padgett, Akin Gump Strauss Hauer & Feld LLP

Mr. Lide Paterno, Akin Gump Strauss Hauer & Feld LLP

Mr. Hannes Sigurgeirsson, Akin Gump Strauss Hauer & Feld LLP

Ms. Shannon A. Jackenthal, Akin Gump Strauss Hauer & Feld LLP

On behalf of the Respondent:

Mr. Alan Bonfiglio Rios, Secretaría de Economía

Ms. Rosalinda Toxqui Tlaxcalteca, Secretaría de Economía

Mr. Rafael Alejandro Augusto, Secretaría de Economía

Ms. Laura Mejía Hernández, Secretaría de Economía

Ms. Paulina Jazmín Rodríguez Cruz, Secretaría de Economía

Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman, LLP

Mr. Gary J. Shaw, Pillsbury Winthrop Shaw Pittman, LLP

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on February 20, 2024; and

- The parties' comments on the Draft Procedural Orders received on 15 March 2024, 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*

- 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 6 February 2024 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 5 October 2023, 16 October 2023 and 6 February 2024.
- 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*

Procedural Order No. 1

- 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 a majority of 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. All awards and 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 reconsideration of such decision by the full Tribunal where practicable upon application by a party.
- 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, including the certified copy of the Award, will be dispatched electronically to the parties. The certified copy of the Award will be sent via *courier* to the address designated by each party and will have the same validity.

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 reconsideration of such decision by the full Tribunal where practicable upon application by a party.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 28*

- 7.1. The Tribunal Secretary is Ms. Veronica Lavista, 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. Veronica Lavista  
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MSN C3-300  
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U.S.A.  
Tel.: + 1 (202) 458-8887  
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Email: vlavista@worldbank.org  
Paralegal name: Mr. Pedro Magariño  
Paralegal email: pmagarino@worldbank.org  
ICSID case address: arb/23/33@icsidcases.worldbank.org

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

Ms. Veronica Lavista

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8. Representation of the Parties  
*Arbitration Rule 2*

- 8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more members of the Arbitral Tribunal.

For the Claimants

Mr. Jonathan C. Poling  
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9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances  
*Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50*

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. Following registration of the Request for arbitration, by letter of 14 August 2023, ICSID informed the Parties that US\$300,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimants pay US\$150,000. ICSID received the Claimants' payment on 21 September 2023. Upon the constitution of the Tribunal, by letter of 7 February 2024, ICSID requested that the Respondent pay US\$150,000. ICSID has not received the Respondent's payment yet.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

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

- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the parties so agree. The method of holding a hearing will be determined in accordance with §21.2 and §21.4.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.
- 10.4. The Award shall be deemed to be made at the place of the arbitration, regardless of where it is signed.

11. Procedural Language(s), Translation and Interpretation

*Administrative and Financial Regulation 32; Arbitration Rule 7*

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

***For Pleadings, Documents and Communications***

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

11.3. Any written requests or applications from the parties may be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 7 days. Where the matter is urgent, a translation shall be provided simultaneously.

11.4. Pleadings, expert opinions, witness statements, and any other supporting documents shall be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 25 days thereafter.

11.5. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal requires a fuller or a complete translation

11.6. Translations need not be certified, unless the translation is disputed and the Tribunal orders a party to provide a certified translation.

11.7. Documents exchanged between the parties pursuant to §15 below (Production of Documents) may be produced in the original language and need not be translated by the party producing them.

11.8. For the purposes of interpretation, the original language of any submitted document shall prevail over the translation.

***For Hearing***

11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.

11.10. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language.

11.11. 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, unless the Tribunal orders interpretation into both procedural languages.

- 11.12. 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***

- 11.13. The Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish. Both language versions shall be equally authentic.

***For Tribunal's Award***

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

**12. Routing of Communications**

***Arbitration Rule 6***

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.5. In accordance with established practice, the parties and their representatives shall not engage in any oral or written communications with any Member of the Tribunal *ex parte* about this arbitration.

**13. Number of Copies and Method of Filing of Parties' Pleadings**

***Arbitration Rules 4, 5 and 9***

- 13.1. By the relevant filing date, the parties shall:

- 13.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;<sup>1</sup> and
- 13.1.2. within 5 business days of the electronic filing, upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.<sup>2</sup>

For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the parties.

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- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable, to the extent possible and without annotation or printing restrictions..
- 13.3. 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 and the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**).
- 13.4. At the conclusion of the written phase of the proceeding, two weeks after the last written submission is filed, 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 orders to date) with a consolidated hyperlinked index of all documents. 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.<sup>3</sup>

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

<sup>2</sup> Supporting documentation shall be uploaded as individual files, not in .zip format.

<sup>3</sup> 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.

- 13.5. 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.
- 13.6. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

14. Number and Sequence of Pleadings – Procedural Calendar

*Arbitration Rules 30 and 42-44*

- 14.1. 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, or by mutual agreement of the parties, decides that this Procedural Timetable requires amendment.
- 14.2. By agreement of the Parties, the Tribunal has (i) bifurcated the proceeding and (ii) determined the Procedural Timetable in Annex B only for the phase of this arbitration addressing Respondent's jurisdictional objections. The Procedural Timetable for the merits phase (if necessary) will be determined in consultation with the Parties following the issuance of the Tribunal's Decision on Respondent's jurisdictional objections.
- 14.3. Any written submission shall be submitted in accordance with ICSID Arbitration Rule 30.
- 14.4. In the Memorial and Counter-Memorial on the merits, 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. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other party.
- 14.5. The second exchange of submissions on the merits shall be submitted in accordance with ICSID Arbitration Rule 44.
- 14.6. 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.

15. Production of Documents

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

- 15.1 The Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) (“IBA Rules”) in relation to document production in this case.
- 15.2 Each party may request the production of a reasonable number of documents from the other party, in accordance with the Procedural Timetable set out in Annex B.
- 15.3 To the greatest extent possible, the Parties shall seek agreement on all production requests.
- 15.4 All requests for the production of documents shall be in writing and shall set forth the specific reasons for the request with respect to each document or class of documents requested that specifies why the documents sought are relevant to the dispute and material to the outcome of the case. Each request shall include a date or range of dates and the subject matter, and the identity of the recipients and senders to the greatest extent possible. For greater certainty, requests such as ‘all documents related to’ a particular subject or matter shall not be sufficient under this rule.
- 15.5 Unless the requested party objects to production, the party shall produce the requested documents within the schedule set out in Annex B. If a party objects to only a certain aspect of a request, that party shall produce the documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural timetable.
- 15.6 To the extent that agreement cannot be reached between the requesting and the requested party, the parties shall jointly submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
- 15.7 If the party having received a request objects to the production, the following procedure shall apply:
  - 15.7.1 The party that has received a request for documents shall file a response indicating which documents or class of documents it objects to exhibit. The response shall state the reasons for each objection.
  - 15.7.2. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.
  - 15.7.3. The requesting party shall respond to the other party’s objection, indicating, with reasons, whether it disputes the objection.

- 15.7.4. Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as Annex C. The parties shall use the model format throughout their exchange of requests, objections, and responses.
- 15.7.5. The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced in accordance with the schedule set out in Annex B of this Order.
- 15.7.6. In the event that a party fails to produce the documents ordered by the Tribunal, the Tribunal may draw such inferences as it deems appropriate, taking into account all relevant circumstances.
- 15.7.7. The Tribunal shall rule on the disputed applications, and may refer to the IBA Rules in respect of matters relating to the taking or production of evidence, which are not otherwise covered by this Procedural Order, the Arbitration Rules or Chapter 11 of the NAFTA. Documents ordered to be produced by the Tribunal shall be produced within the time limit set forth in the Procedural Schedule.
- 15.8 Documents produced by the parties shall be considered part of the file only if a party subsequently submits them as documentary annexes to its pleadings or upon authorization by the Tribunal after the exchange of pleadings, in accordance with §17 below.
- 15.9 Documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR), whenever possible.
- 15.10 Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.
- 15.11 If the Tribunal determines that a disputing party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.
- 15.12 When practical and not unduly burdensome, the producing party shall group the documents produced by request and identify the relevant request.

16. Submission of Documents

*Convention Article 44; Arbitration Rule 5*

- 16.1 The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2 The documents shall be submitted in the manner and form set forth in §13, above.
- 16.3 Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.
- 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
- 16.3.2 If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such document.
- 16.4 The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 16.5 Documents shall be submitted in the following form:
- 16.5.1 The number of each Exhibit containing a document produced by Claimants 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.
- 16.5.2 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 §16.5.4.



- 16.5.3 A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.4 Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6 Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7 The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8 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.
- 16.9 An electronic copy of each demonstrative exhibit and 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, to the court reporter, and to the interpreters as necessary at least one hour prior the use of the electronic exhibit.
- 16.10 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 filesharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number.

17. Witness Statements and Expert Reports

*Convention Article 43(a); Arbitration Rule 38*

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings. The witness statements and expert reports 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".
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances

exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.2).

- 17.3 Each witness statement and expert report shall include numbered paragraphs, shall be signed and dated by the respective witness or expert, and shall include all information referred to in Articles 4(5) and 5(2), respectively, of the IBA Rules.
- 17.4 It shall not be inappropriate for a disputing party to have its officers, employees, legal advisors or other representatives meet with that party's witnesses or potential witnesses to discuss their potential testimony with them.
- 17.5 Expert reports shall be accompanied by any documents or information on which they are based, unless such documents or information have already been submitted as annexes with the submissions of the parties, in which case reference to such annexes shall be sufficient. Such documents or information shall be subject to the rules on language set out in § 11 above.
- 17.6 Experts and witnesses shall disclose in their reports or witness statements, or in annexes to their reports or witness statements, the documents, data and other information on which they relied to support their opinions.
- 17.7 Expert reports shall include a statement of independence and shall disclose any relationship with members of the Tribunal or the Parties.

## 18. Examination of Witnesses and Experts

### *Arbitration Rule 38*

- 18.1 A party may request the cross-examination at the hearing of witnesses or experts of the other party whose written statement has been previously submitted with the main written submissions. Each party shall be responsible for ensuring the appearance of its own witnesses at the Hearing.
- 18.2 The parties shall notify the opposing party which witnesses and experts of the other party it wishes to call for cross-examination on the date set out in the Procedural Calendar. Shortly after the parties' notifications, the Tribunal shall indicate which witnesses or experts, if any, it wishes to examine who have not been called by the parties.
- 18.3 Considering the circumstances, the Tribunal may disregard the testimony of a witness or expert called to testify at the Hearing and who fails to appear at the Hearing without good cause. The Tribunal may authorize questioning by videoconference for justifiable reasons.

- 18.4 Failure to cross-examine a witness or expert or partial cross-examination of a witness or expert shall not imply acceptance of the content of the corresponding witness statement or expert report. Each party is free to refute the content of the witness statement or expert report by all available means of evidence and the Tribunal has the power to assess the probative value of the witness statement or expert report.
- 18.5 Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may question the witness or expert at any time during the Hearing. Witnesses and experts shall make a statement of truth at the beginning of their examination.
- 18.6 Direct examination is conducted by means of witness statements and expert reports. However, the party presenting the witness may conduct a brief direct examination at the Hearing. Experts may summarize their reports and conclusions, either by direct examination or in the form of a brief presentation (possibly with the aid of a PowerPoint presentation), not exceeding 30 minutes. Any witness or expert called for direct examination may be cross-examined by the other party and questioned by the Tribunal.
- 18.7 As a general rule, the scope of cross-examination shall be limited to the content of the witness statement or expert report. The second direct examination shall, as a general rule, be limited to the subject matter of the cross-examination.
- 18.8 Prior to their examination, witnesses may not be present at the Hearing, discuss the examination of any other witness who has already appeared before the Arbitral Tribunal, read any transcript of oral argument or oral testimony, or listen to or view any audio or video recording of oral argument or oral testimony. Witnesses shall be allowed in the hearing room after they have given oral testimony. Experts shall be allowed access to the hearing room and transcripts of the Hearing at any time.
- 18.9 A fact witness who is a party or representative of a party may be present in the hearing room during the parties' opening statements, shall leave the hearing room after the opening statements, and shall be called to testify before any other witness. After testifying, a fact witness who is a party or representative of a party may remain in the hearing room for the duration of the Hearing. The parties may not designate more than one witness as a representative of a party.

#### 19. Pre-Hearing Organizational Meetings

##### *Arbitration Rule 31*

- 19.1 A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties. It shall comprise a teleconference or

videoconference between the Tribunal, or its President, and the parties and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

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

19.3 Prior to the Organizational Meeting, the Tribunal shall send a draft Procedural Order on the organizational aspects of the Hearing, so that the parties may send their comments, agreements and disagreements thereon prior to the Organizational Meeting. Following the Organizational Meeting prior to the Hearing, the Tribunal shall issue a Procedural Resolution reflecting the decisions taken in preparation for the Hearing.

## 20. Case Management Conferences

### *Arbitration Rule 31*

20.1. The Tribunal shall convene case management conferences with the parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence). It is expected that a case management conference will be held on a date in accordance with Annex B, as decided by the Tribunal.

## 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. The hearing shall be held in-person in Washington, DC at the time determined by the parties and the Tribunal. If extraordinary circumstances make an in-person hearing impossible or impracticable, the hearing shall be held virtually. The date of the hearing shall be determined at a later stage, but not before 8 weeks after the filing of the last written submission.

- 21.2 The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.3 Subject to the Tribunal’s discretion, in all hearings the principle of equality of parties shall be observed. Hearings shall be conducted according to the chess-clock principle. The allocation of time between the disputing parties shall be decided prior to the hearing in observance of the principle of equality of the parties and after consultation with the parties.
- 21.4 All hearings shall be closed to the public. Upon request, arrangements will be made for other NAFTA Parties to attend the hearing.
- 21.5 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:
- 21.5.1 A chronology of relevant facts in tabular form;
  - 21.5.2 A list and brief description of the individuals and entities who/which are part of the relevant factual background (“dramatis personae”); and
  - 21.5.3 A list of the substantive issues required to be determined by the Tribunal.

22. Recordings of Hearings and Sessions

*Arbitration Rule 29(4)(i)*

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 22.2. 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.
- 22.3. The parties shall agree on any corrections to the transcripts within 30 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.

23. Post-Hearing Memorials and Statements of Costs

*Convention Article 44; Arbitration Rules 51*

- 23.1. The Tribunal shall decide at the hearing, after consultation with the parties, whether any post-hearing briefs shall be filed and, if required, the length, formal content and the date for filing of such post-hearing briefs. Post-hearing briefs shall not include new evidence not previously presented.
- 23.2. At the conclusion of the hearing, after consultation with the parties, the Tribunal shall determine the date and the form in which the parties shall file their statements of costs.

24. Transparency matters

*Convention Article 48(5), Arbitration Rules 62-66*

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

25. Non-Disputing Parties to NAFTA

- 25.1. The non-disputing NAFTA Parties may submit submissions to the Tribunal within the meaning of NAFTA Article 1128 no later than the date indicated in Annex B.
- 25.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, non-disputing NAFTA Parties may attend oral hearings and shall be entitled to receive a copy of confidential versions of transcripts, briefs and exhibits, including witness statements and expert reports. Non-disputing NAFTA Parties shall be made aware of Procedural Order No. 2 and, in accordance with NAFTA Article 1129, shall treat all information received from the Respondent as if they were a disputing party, in particular with respect to the protection of confidential information.
- 25.3. The disputing parties shall be given the opportunity to comment on any submission under NAFTA Article 1128 no later than the date set forth in Annex B.

26. Amicus Curiae participation

*CLC Statement on the Participation of Non-Disputing Parties of October 7, 2003; Rule 67 of the Arbitration Rules*

- 26.1. If a request for the filing of an *amicus curiae* brief is filed before the date indicated in Annex B, the Tribunal shall give appropriate directions in the exercise of its powers under Rule 67 of the Arbitration Rules and shall take into consideration the statement of the North American Free Trade Commission on the participation of the non-disputing Parties of October 7, 2003.

- 26.2 On the relevant dates set forth in Annex B, the parties shall have the opportunity to: (1) comment on any request for the filing of an *amicus curiae* brief; and (2) submit simultaneous comments on issues raised in any *amicus curiae* brief filed pursuant to a decision of the Tribunal.
- 26.3 If a party intends to use at a hearing a document referred to in an *amicus curiae* brief that is not yet part of the record, that party shall notify the other party and the Tribunal of the intended use 10 days in advance. The notice shall specify the reference number to be given to the document. If the notification is made by e-mail, an electronic copy of the document in question shall be attached to the e-mail, and a hard copy of the document shall be submitted prior to its use at the hearing.

## 27. Data Privacy and Cybersecurity

- 27.1. 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.
- 27.2. 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.
- 27.3. 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.

## 28. Amicable Dispute Settlement

- 28.1. 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). Any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

On behalf of the Tribunal,

[Signed]

\_\_\_\_\_  
Rt. Hon. Lord Collins of Mapesbury, LLD, FBA

President of the Tribunal

Date: 3 April 2024



## 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	<b>Title of Pleading–LANGUAGE</b>
	<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	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANTS’ FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
<b>RL-####–LANGUAGE</b>	
To be produced sequentially throughout the case.	
<b>CLAIMANTS’ LEGAL AUTHORITIES</b>	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
<b>RESPONDENT’S LEGAL AUTHORITIES</b>	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<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	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>
	<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	<b>WITNESS/EXPERT INITIALS-###</b>
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>

*Cyrus Capital Partners, L.P. and Contrarian Capital Management, LLC v. United Mexican States*

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Procedural Order No. 1 - Annex A

Witness Statements, Expert Reports, Legal Opinions	<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>
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
<b>OTHER APPLICATIONS</b>	<b>Name of Application-[Party]-LANGUAGE</b>
	<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-[Claimants]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimants]-ENG</i>
	<i>Post-Hearing Brief-[Claimants]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimants]-SPA</i>	

**Annex B – Schedule**

<b>No.</b>	<b>Event</b>	<b>Author</b>	<b>Date</b>	<b>Interval</b>
1.	Memorial on Jurisdiction	Respondent	Tuesday, 4 June 2024	75 days from the First Session
2.	Counter-Memorial on Jurisdiction	Claimants	Monday, 19 August 2024	75 days from Memorial on Jurisdiction
3.	Requests for Document Production	Claimants and Respondent	Monday, 2 September 2024	2 weeks from Counter-Memorial on Jurisdiction
4.	Production of non-objected documents and Objections to the Requests for Document Production (if any)	Claimants and Respondent	Monday, 30 September 2024	4 weeks from Requests for Document Production
5.	Reply to the Objections to the Requests for Document Production Redfern Schedule provided to Tribunal	Claimants and Respondent	Monday, 28 October 2024	4 weeks from production of non-objected documents and objections
6.	Decision of Tribunal	Tribunal	Monday, 25 November 2024	4 weeks from Reply to Objection
7.	Simultaneous production of documents ordered by Tribunal	Claimants and Respondent	Monday, 23 December 2024	4 weeks from Decision of Tribunal
8.	Reply on Jurisdiction	Respondent	Friday, 21 February 2025	60 days from Decision of Tribunal on Document Production

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Procedural Order No. 1 – Annex B

No.	Event	Author	Date	Interval
9.	Rejoinder on Jurisdiction	Claimants	Tuesday, 22 April 2025	60 days from Reply on Jurisdiction
10.	Applications for leave to file non-disputing party ( <i>amicus</i> ) submissions, if any	TBD	Wednesday, 7 May 2025	15 days from Rejoinder on Jurisdiction
11.	Submissions under NAFTA Article 1128, if any	TBD	Wednesday, 7 May 2025	15 days from Rejoinder on Jurisdiction
12.	Comments on applications for leave to file non-disputing party ( <i>amicus</i> ) submissions, if any	Claimants and Respondent	Thursday, 22 May 2025	21 days from applications for leave to file non-disputing party submissions
13.	Comments on NAFTA Article 1128 submissions	Claimants and Respondent	Thursday, 22 May 2025	21 days from submissions under NAFTA Article 1128
14.	Decision on applications for leave to file non-disputing party ( <i>amicus</i> ) submissions, if any	Tribunal	Friday, 6 June 2025	15 days from Comments
15.	Parties to identify witnesses and experts for cross-examination	All		TBD
16.	Pre-Hearing Conference	All		TBD
17.	Hearing on Jurisdiction	All		TBD
18.	Post-Hearing Submission	Parties		TBD
19.	Cost statements	Parties		TBD

**Note:** The remainder of the procedural schedule will be fixed by the Tribunal after consultation with the Parties during a second procedural conference to be scheduled in due course as provided below.

**Annex C - Sample Redfern Table for Document Requests**

No.	Documents or categories of documents requested (requesting party)	Relevance and materiality, including references to the brief (requesting party)		Reasoned objections to a request for production of documents (Objecting Party)	Response to the objections to the request for production of documents (Requesting Party)	Decision (Tribunal)
		References to principal documents, documentary attachments, witness statements or expert reports	Comments			