INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Daniel W. Kappes and Kappes, Cassiday & Associates

v.

Republic of Guatemala

(ICSID Case No. ARB/18/43)

PROCEDURAL ORDER NO. 1

Members of the Tribunal
Ms. Jean Kalicki, President of the Tribunal
Mr. John M. Townsend, Arbitrator
Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal
Mr. Francisco Grob

September 10, 2019

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Introduction

The first session of the Tribunal was held on 26 August 2019, at 09:00 a.m. (Washington, DC time), by telephone conference. The session was adjourned at 11:07 a.m.

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
Ms. Jean Kalicki, President of the Tribunal
Mr. John M. Townsend, Arbitrator
Prof. Zachary Douglas QC, Arbitrator

ICSID Secretariat:
Mr. Francisco Grob, Secretary of the Tribunal
Ms. Daniela Argüello, Legal Counsel, ICSID

Participating on behalf of the Claimants:
Ms. Andrea J. Menaker, White & Case LLP
Mr. Rafael Llano, White & Case LLP
Mr. Ronan O'Reilly, White & Case LLP
Ms. Agnieszka Zarowna, White & Case LLP
Ms. Alexa Romanelli, White & Case LLP

Participating on behalf of the Respondent:
Adolfo E. Jiménez, Holland & Knight LLP
Brian A. Briz, Holland & Knight LLP
Katharine Menéndez de la Cuesta, Holland & Knight LLP
Arantxa Cuadrado, Holland & Knight LLP
Luisa Gatica, Procuraduría General de la Nación (Attorney General's Office, Republic of Guatemala)
Lilian Nájera, Procuraduría General de la Nación (Attorney General's Office, Republic of Guatemala)
Mario Mérida, Procuraduría General de la Nación (Attorney General's Office, Republic of Guatemala)

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on August 9, 2019, as amended by the parties on August 23, 2019.

- The Draft Procedural Order circulated by the Tribunal Secretary on August 9, 2019;

- The parties' comments on the Draft Agenda and the Draft Procedural Order received on August 23, 2019, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree; and

- The Claimants' further comments received by letter of 29 August 2019, and the Respondent's further comments received by letter of 4 September 2019.

Following the session, the Tribunal now issues the present Order:

Order

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

1. Applicable Arbitration Rules
Convention Article 44; DR-CAFTA Article 10.16.5

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent modified and/or supplemented by the Dominican Republic-Central America Free Trade Agreement ("DR-CAFTA"), in force in the United States since March 1, 2006 and in the Republic of Guatemala since July 1, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Convention Article 37; Arbitration Rule 6; DR-CAFTA Article 10.19

2.1. The Tribunal was constituted on July 2, 2019 in accordance with the ICSID Convention, the ICSID Arbitration Rules and the DR-CAFTA. 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 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on July 2, 2019.

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

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

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

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

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

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

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

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

4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)

4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, such as audio or video-conference for procedural meetings or decisions when physical presence is not possible. Physical presence will be required for hearings on substance.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence. Where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates as soon as possible after the expiration of the three month period, and every month thereafter.

5.4. §5.3 shall not apply to the Tribunal's decision to expeditiously resolve the preliminary objections submitted by the Republic of Guatemala on 16 August 2019. Such decision shall be issued in accordance with the time period prescribed in Article 10.20.5 of the DR-CAFTA.

5.5. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

5.6. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding, in consultation with the parties.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Mr. Francisco Grob, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time. Ms. Daniela Argüello, Legal Counsel, ICSID, will assist Mr. Grob in this proceeding.

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

Mr. Francisco Grob
ICSID
MSN C3-316
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-5072
Fax: + 1 (202) 522-2615
Email:

Mr. Francisco Grob	fgrob@worldbank.org
Ms. Daniela Argüello	darguello@worldbank.org
Paralegal email:	ifernandez1@worldbank.org

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

Mr. Francisco Grob
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036

USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

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

For Claimants

Daniel W. Kappes and
Kappes, Cassiday & Associates
c/o Ms. Andrea J. Menaker
White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom
and
c/o Mr. Rafael Llano
White & Case LLP
Blvd. Manuel Ávila Camacho 24 - PH
Col. Lomas de Chapultepec
Delegación Miguel Hidalgo
Ciudad de México, México C.P. 11000
Email:
amenaker@whitecase.com;
rllano@whitecase.com

For Respondent

Republic of Guatemala
c/o Mr. Acisclo Valladares Urruela
Ministerio de Economía
8a. Av. 10-43, Zona 1
Guatemala, Guatemala
and
c/o Mr. Alexander Salvador Cutz Calderón
Dirección de Administración del Comercio Exterior
Ministerio de Economía
8a. Av. 10-43, Zona 1
Guatemala, Guatemala
and
c/o Mr. Jorge Luis Donado Vivar
Procurador General de la Nación
Procuraduría General de la Nación
15 Av. 9-69, Zona 13
Guatemala, C.A. 01013
and
c/o Ms. Ana Luisa Gatica Palacios
Jefe de la Unidad de Asuntos Internacionales Procuraduría General de la Nación
15 Av. 9-69, Zona 13
Guatemala, C.A. 01013
and
c/o Mr. Adolfo E. Jiménez
Mr. Brian A. Briz
Ms. Katharine Menéndez de la Cuesta
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, FL 33131
USA

and
c/o Ms. Arantxa Cuadrado
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31 West 52nd Street
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Email: avalladares@mineco.gob.gt;
acutz@mineco.gob.gt;
ana.gaticap@pgn.gob.gt;
Adolfo.Jimenez@hklaw.com;
Brian.Briz@hklaw.com;
Katharine.Menendez@hklaw.com;
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jorge.donado@pgn.gob.gt;
mario.moralesm@pgn.gob.gt;
lilian.najerar@pgn.gob.gt;
mario.meridap@pgn.gob.gt;
johana.ruano@pgn.gob.gt;
asuntosinternacionalespgngt@gmail.com;
jlgodinez@mineco.gob.gt;
aborsoij@mineco.gob.gt;
amgiammatteic@mineco.gob.gt

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Arbitration Rule 28; DR-CAFTA Article 10.26.1; Administrative and Financial Regulation 14

9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

9.2. By letter of July 2, 2019, ICSID requested that each party pay US$125,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on July 19, 2019 and the Respondent's payment on August 21, 2019.

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
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); CAFTA-DR Article 10.20(1)

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

10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Languages, Translation and Interpretation
Arbitration Rules 20(1)(b) and 22; Administrative and Financial Regulation 30(3) and (4)

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

11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language, except for any correspondence requiring action or payment from the Republic of Guatemala, which shall be transmitted in Spanish. To the extent that the Secretariat provides any translation to the Tribunal in respect of such correspondence, the Secretariat shall also provide such translation (electronically) to the parties.

For Parties' Written Submissions

11.3. Written requests and applications may be submitted in either procedural language, provided that a translation into the other procedural language is submitted within 2 business days thereafter for short documents (e.g., correspondence and procedural applications) or 10 business days thereafter for more substantial applications. Notwithstanding these permitted intervals, a party wishing to obtain an expedited ruling on an application should endeavor to submit it simultaneously in both procedural languages.

11.4. Pleadings, witness statements and expert reports may be submitted in either procedural language, provided that a translation into the other procedural language is filed within 10 business days thereafter.

11.5. Accompanying documentation (i.e., legal authorities and exhibits) may be submitted in either procedural language, provided that:

11.5.1. For documentation originally in a language other than Spanish, a translation to Spanish of any *specific passages* relied upon in the pleadings, witness statements and expert reports is provided within 10 business days;[1] and

[1] The Tribunal notes the Respondent's indication, in its letter of 4 September 2019, that it will consider it sufficient if the translated pleadings, witness statements or expert reports *themselves* incorporate the Spanish translation of the specific passages relied upon from an underlying exhibit or legal authority, as the Respondent indicated it did for purposes of its Preliminary Objections. For administrative clarity, however, it may be preferable for the Parties to add the translation of the relevant passages as an associated exhibit or legal authority in accordance with the naming conventions in Annex A hereto, so the translation later may be located easily by the relevant document number rather than by searching for a cross-reference in the translated pleading, witness statement or expert report that first quoted the particular passage.

11.5.2. For documentation originally in a language other than English, a translation to English is provided in a separate document identified with the naming conventions in Annex A hereto, covering both the *specific passages* quoted or cited in the pleadings, witness statements and expert reports and the *immediately preceding and subsequent passages*, as necessary to put the referenced excerpt into appropriate context for the Tribunal's consideration. The Tribunal may require a fuller or a complete translation at the request of a party or on its own initiative.

11.5.3. For materials submitted in one language only prior to issuance of this Procedural Order No. 1, the timetable for submitting the requisite translations shall run from the date of this Order.[2]

11.6. Accompanying documentation in a language other than the procedural languages may be filed in its original language, provided that translations consistent with the directions in paragraphs 11.5.1 and 11.5.2 above are provided within 10 business days.

11.7. Deadlines for reply submissions shall begin to run upon submission of the document they respond to, and not from the date the translation is filed.

11.8. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version and the Tribunal orders it.

11.9. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.

11.10. Document requests, objections thereto, and replies, made under §15 below in the form of a Redfern Schedule, may be in either procedural language, provided that its translation into the other procedural language is filed within 10 days. The timetable provided in Annex B for the Tribunal's resolution of disputed document requests in any event will run only from the date of its receipt of the completed Redfern Schedules in English.

For Hearing

11.11. Either English or Spanish may be used during hearings. Simultaneous interpretation from one language into the other language shall be available at all times. Transcripts shall be taken in both languages.

[2] On a going forward basis, a party may not seek relief from the translation obligations imposed by this Order if it has previously insisted that the other party abide by such obligations. The parties nonetheless may hereafter agree to any mutually applicable modifications that they wish, provided that the Tribunal continues to receive English language versions of case materials within the timetables herein provided or hereafter authorized.

11.12. The testimony of a witness called for examination during the hearing who prefers to give evidence other than the procedural languages shall be interpreted simultaneously.

11.13. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §20 below), which witnesses or experts require interpretation.

11.14. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

11.15. The Tribunal shall make any order, decision or Award in both procedural languages, English and Spanish, with both language versions to be equally authentic, subject to the following: (a) the Tribunal may initially make any order or decision in one procedural language and subsequently issue that order or decision in the other procedural language; (b) the Tribunal shall render the Award in English and Spanish simultaneously.

12. Routing of Communications
Administrative and Financial Regulation 24

12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.

12.2. 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.

12.3. 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.

12.4. The email addresses of the Members of the Tribunal are:

Ms. Jean Kalicki Email: jean.kalicki@kalicki-arbitration.com	Mr. John M. Townsend Email: john.townsend@hugheshubbard.com	Prof. Zachary Douglas QC Email: ZacharyDouglas@matrixlaw.co.uk

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

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness

statements, expert reports and an index of all the supporting documentation attached to the pleading; and

13.2. Three business days following the filing date, the parties shall upload the pleading, with all the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing processes indicated in these subparagraphs are applicable both to the original language submission and to any subsequent translations agreed by the parties. The translations shall be submitted within the time limits agreed to for the submissions of translations under §15 above.

13.3. On the third business day following the electronic filing of the translations, the parties shall courier to the Tribunal Secretary:

13.3.1. one unbound hard copy in A4/Letter format[3] of the entire submission[4] both in the original language and translations, including signed originals of the pleading, witness statements, and expert reports, together with any exhibits (but not including legal authorities); and

13.3.2. two USB drives with a full copy of the entire submission both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

13.4. Also on the third business day following the electronic filing of the, the parties shall courier to each Member of the Tribunal at the addresses indicated at §13.5 below:

13.4.1. For Mr. Townsend and Prof. Douglas, one hard copy in A5 format of the entire submission both in the original language and translations including the pleading, the witness statements and the expert reports (but not including exhibits or legal authorities); for Ms. Kalicki, no hard copies are required; and

13.4.2. one minimum USB drive (Mac-compatible for Ms. Kalicki and Prof. Douglas) with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

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

[3] The A4/Letter format is required for ICSID's archiving.
[4] The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

Ms. Jean Kalicki 201 West 72nd Street, #6A, New York, NY 10023 United States of America Phone: +1(646) 371-9156	Mr. John M. Townsend Hughes Hubbard & Reed LLP 1775 I Street, NW, Washington, DC 20006 Phone: +1(202) 721 4640	Prof. Zachary Douglas QC Matrix Chambers Rue Général-Dufour 15 1204 Geneva Switzerland Phone: +44 (0) 20 7404 3447

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13.6. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

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

13.8. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex A**).

13.9. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.

13.10. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.

13.11. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 29 and 31; DR-CAFTA Article 10.20

14.1. In respect of both the Preliminary Objections raised under Article 10.20.5 of DR-CAFTA, as well as any subsequent phase of proceedings, there shall be two rounds of written submissions (*i.e.*, Memorial, Counter-Memorial, Reply, Rejoinder), filed consecutively.

14.1.1. §14.1 shall not be understood as Respondent's waiver to file any additional preliminary objections under the applicable rules or its right to request the proceedings be suspended on the merits.

14.1.2. Claimant does not by virtue of §14.1.1 agree to any additional preliminary objections made by Claimant, or to proceedings being suspended on the merits.

14.2. The pleadings in the second round (*i.e.*, Reply and Rejoinder) shall be strictly responsive and limited to rebutting the pleading filed by the other party in the immediately preceding round. This extends to any additional witness testimony, expert evidence, documentary or other evidence, and legal authorities accompanying the pleadings in the second round.

14.3. With respect to any subsequent phase of proceedings following resolution of the Preliminary Objections raised under Article 10.20.5 of DR-CAFTA, the Parties shall observe the following agreed page limitations for written submissions: (a) for their initial submissions, namely the Memorial and Counter-Memorial, 300 pages, and (b) for their responsive submissions, namely the Reply and Rejoinder, 250 pages.

14.4. Annex B contains the timetable for the filing of pleadings.

15. Production of Documents
Convention Article 43(a); Arbitration Rules 24, 33 and 34

15.1. The International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) shall guide the Tribunal and the parties regarding document production in this case.

15.2. On the date provided in Annex B, each party may serve a request for production of documents on the other party. Such a request for production shall identify each document or category of documents sought with precision and establish its relevance and materiality to the outcome of the dispute. The request shall be made in the form of a horizontally formatted Redfern Schedule (see template set forth in Annex C), in both Word and PDF format.

15.3. On the date provided in Annex B, the other party shall either produce the requested documents or, using the Redfern Schedule provided by the first party, provide the requesting party with its reasons and/or objections for its failure or refusal to produce responsive documents.

15.4. On the date provided in Annex B, the requesting party shall reply to the other party's objections in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal, with a copy to the other party (in both Word and PDF formats).

15.5. The Tribunal reminds the parties of their duty to act in good faith in the taking of evidence and within the framework of the processes laid down by the Tribunal in

the production of the evidence. This requires the parties not only to formulate narrow and specific document requests in the first instance, but also to cooperate in the process of achieving such formulations with respect to each other's requests. In consequence, a party objecting to a request on grounds of overbreadth or excessive burden should indicate whether there is a narrower formulation with which it would be willing to comply. In reply, the requesting party should likewise indicate, in addition to any comments on the other party's objection to its original formulation, whether there is a narrower formulation that it would be willing to accept. The parties should not shift entirely to the Tribunal the burden of identifying potential alternate formulations that avoid excessive burden while still allowing production of documents that are relevant and material to the outcome of the case.

15.6. On or about the date provided in Annex B, the Tribunal shall rule on the objections. A party shall produce documents ordered by the Tribunal by the date provided in Annex B.

15.7. Documents shall be produced in electronic copy via a USB drive. Documents shall be bates stamped in numerical order on each page, and each document shall be contained in a separate file in the electronic copy.

15.8. Documents produced shall be sent directly to the requesting party without copying the Tribunal or the Tribunal Secretary. Documents so produced shall not be considered to be on record unless and until the requesting party subsequently files them as exhibits in accordance with §16 below.

15.9. The Tribunal may at any time order document production based on a showing of exceptional circumstances.

16. Submission of Documents

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

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 exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

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

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

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

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

16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

16.5.2. 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.

16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.

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

16.5.5. Exhibits shall also be submitted in PDF format and start with the number "C-0001" and "R-0001," 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. Accordingly, any document and its translation shall be designated with the same exhibit number.

16.5.6. Electronic filings 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 attaching them to their pleadings. Documents need not be resubmitted with witness statements / expert reports even if referred to in such statements.

16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall

number its demonstrative exhibits consecutively, and clearly indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

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

17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

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

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

18. Submission by Non-Disputing Parties
CAFTA-DR Article 10.20.2

18.1. The Non-Disputing CAFTA-DR Parties shall be entitled to make oral and written submissions to the Tribunal within the meaning of Article 10.20.2. The Tribunal shall set the schedule for any submission from a Non-Disputing Party and the parties shall have the opportunity to comment on such submission, including the opportunity to comment in writing on any Non-Disputing Party submission received in writing.

18.2. Pursuant to DR-CAFTA Article 10.20.3, the Tribunal has the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. In deciding whether to accept a request to submit an *amicus curiae* submission, the Tribunal shall invite and consider the observations of the parties as to the appropriateness and relevance of the requested submission, within reasonable time limits to be established based on the circumstances. In the event the Tribunal decides to receive *amicus curiae* submissions, it shall establish an appropriate page limit for such submissions, and shall provide the parties with an opportunity to comment on such submissions.

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

19.1. Unless otherwise stated, the rules below apply to the examination of fact and expert witnesses subject to additions and modifications following the pre-hearing conference.

19.2. Each party shall be responsible for summoning its own witnesses to the hearing, except where the other party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.

19.3. On the date provided in Annex B, each party shall notify the other party, with a copy to the Tribunal, which witnesses or experts of the other party it wishes to cross-examine at the hearing. On the following business day, each party may designate three of its own witnesses or experts, who were not called for cross-examination, to testify, subject to the same parameters for direct examination set forth at § 19.9.2. Once a party designates witnesses or experts to testify under this subparagraph, the opposing party will have a right to cross-examine that witness or expert.

19.4. Shortly after the parties' notification, the Tribunal will indicate to the parties whether it wishes any witnesses or experts who have not been designated to testify to appear at the hearing.

19.5. The facts contained in the written statement of a witness whose cross-examination has been waived by the other party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.

19.6. In exceptional circumstances, the Tribunal may allow a witness to be examined by video-conference.

19.7. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the witness statement of such witness or report of such expert to be stricken from the record, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report. If a witness's or expert's absence is determined to be justified (e.g., health), the Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.

19.8. Subject to other arrangements agreed during the pre-hearing organizational meeting, fact witnesses shall be examined prior to expert witnesses, the Claimants' witnesses being examined prior to the Respondent's witnesses.

19.9. At the hearing, the examination of each witness shall proceed as follows:

19.9.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3);

19.9.2. The party who has presented the fact witness may examine the witness for up to 15 minutes, for purposes of asking introductory questions limited to their professional background, corrections to his/her written statement, and to address matters which have arisen after that witness's statement was signed (direct examination);

19.9.3. The party who has presented the expert witness may examine the expert for up to 45 minutes, which examination may take the form of a presentation given by the expert;

19.9.4. The Tribunal may modify the presumptive time limits set forth above for good cause shown, based on any applications received and following consultation with the parties during the pre-hearing organizational meeting or other appropriate occasion.

19.10. Cross-examination:

19.10.1. Factual witnesses may be cross-examined on the content of his/her witness statement, and on any question directly related to the issues in dispute of which the witness has personal knowledge.

19.10.2. Cross-examination of experts should be limited to the issues contained in their report, with the exception of questions relating to credibility.

19.10.3. The party who has presented the witness or expert may then re-examine (re-direct) the witness or the expert with respect to any matters or issues arising out of the cross-examination;

19.10.4. The Tribunal may examine the witness at any time, either before, during or after examination by one of the parties.

19.10.5. To the extent that it may assist its understanding, following the cross examination by the parties, the Tribunal may order two or more experts to be examined concurrently (expert conferencing). The manner and conduct of such conferencing will be discussed at the pre-hearing organizational meeting referred to in §20.1.

19.11. 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 any transcript of any oral testimony or argument, or view the hearing through video conference facilities prior to his or her examination. This limitation does not apply to expert

witnesses, who may be present at all times. However, in the event that one or more party representatives are also factual witnesses, each party may designate *one* such party representative-witness to attend the parties' opening statements. Party representative-witnesses shall otherwise be subject to the restrictions set out in the first sentence of this section. The Tribunal will discuss at the pre-hearing organizational meeting the possibility of hearing testimony from any such party-representative-witnesses first, in order to enable the party representatives to attend the examination of subsequent witnesses to the extent possible.

20. Pre-Hearing Organizational Meetings
Arbitration Rule 13

20.1. A pre-hearing organizational meeting shall be held on a date determined by the Tribunal after consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. Hearings
Arbitration Rules 20(1)(e) and 32; CAFTA-DR Article 10.21.2

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 be held at a place to be determined in accordance with §10 above.

21.3. The hearing shall take place not before 8 weeks after the filing of the last written submission.

21.4. The principle of equal time shall be observed with flexibility, subject to adjustments if due process so requires. The Secretary of the Tribunal will keep a chess clock and advise the parties daily of the length of time used, it being understood that a fixed time will be established for opening statements and that the chess clock will count against a party during direct examination and re-direct examination of its own witnesses and experts and cross-examination of the opposing party's witnesses and experts. Tribunal questions to counsel or witnesses, to clarify points being made, shall not interrupt the clock for the party otherwise conducting that argument or examination, but any extended Tribunal questioning will not be allocated against party time, nor will time spent on procedural discussions.

21.5. The parties shall consult in advance of the hearing in an attempt to agree the procedure for the hearing(s), including the length of opening and closing statements. If the parties fail to agree, the Tribunal shall make such determinations after consultation with the parties during the pre-hearing organizational meeting(s) referred to in §19 above.

21.6. Pursuant to DR-CAFTA Article 10.21.2, the Tribunal shall conduct hearings open to the public by way of a live video and audio transmission to a publicly accessible separate viewing room at the Centre's headquarters in Washington, D.C. To the extent that protected information is referenced at the hearing, the Tribunal shall suspend the transmission to the viewing room. The parties shall give the Tribunal advance notice prior to referencing protected information at the hearing.

21.7. The Tribunal shall decide at a later stage in the proceeding whether it is necessary to accommodate oral submissions (if any) by Non-Disputing DR-CAFTA Parties.

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

22. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members in both procedural languages.

22.2. Verbatim transcripts in both procedural languages 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 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 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 parties 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 Rule 28(2)

23.1. The need for and form of post-hearing submissions, if any, shall be decided by the Tribunal in consultation with the parties at the close of the Hearing.

23.2. In accordance with Arbitration Rule 28(2), within a time limit to be established by the Tribunal, each party shall submit to the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

24. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); CAFTA-DR Article 10.21

24.1. The parties' consent to ICSID publication of the award and any order or decision issued in the present proceeding, subject to redaction of designated protected information.

24.2. Pursuant to Article 10.21.4(c) of CAFTA-DR, a party shall, within 10 business days after a document has been submitted containing information claimed to be protected information, submit a redacted version of the document that does not contain the information.

24.3. The ICSID Secretariat may publish the award and any order or decision in the present case on its website, subject to redaction of designated protected information.

[signed]

Ms. Jean Kalicki
President of the Tribunal
Date: September 10, 2019

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**
	Memorial on Jurisdiction-FR
	Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA
	Reply on Annulment-FR
	Rejoinder on Quantum-ENG
SUPPORTING DOCUMENTATION Exhibits to Submissions, Witness Statements, Expert Reports, Legal Opinions	**C–####–LANGUAGE** **R–####–LANGUAGE** To be produced sequentially throughout the case.
	CLAIMANTS' FACTUAL EXHIBITS
	C-0001-ENG
	C-0001-SPA
	RESPONDENT'S FACTUAL EXHIBITS
	R-0001-FR
	R-0001-SPA
Legal Authorities	**CL–####–LANGUAGE** **RL–####–LANGUAGE** To be produced sequentially throughout the case.
	CLAIMANTS' LEGAL AUTHORITIES
	CL-0001-ENG
	CL-0001-FR
	RESPONDENT'S LEGAL AUTHORITIES
	RL-0001-SPA
	RL-0001-ENG
Witness Statements	**Witness Statement-Name of Witness-Name of Submission-LANGUAGE**
	Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA
	Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG
Expert Reports	***Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE***
	Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG

	Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG
Legal Opinions	***Legal Opinion-Name of Expert-Name of Submission-LANGUAGE***
	Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR
	Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR
INDICES	**Consolidated Hyperlinked Index**
	Index of Exhibits-C-#### to C-####
	Index of Exhibits-C-0001 to C-0023
	Index of Legal Authorities-RLA-### to RLA-###
	Index of Legal Authorities-RLA-0001 to RLA-0023
OTHER APPLICATIONS	**Name of Application–[Party]-LANGUAGE**
	Preliminary Objections under Rule 41(5)-SPA
	Request for Bifurcation-ENG
	Request for Provisional Measures-[Respondent]-SPA
	Request for Production of Documents-[Claimant]-SPA
	Request for Stay of Enforcement-FR
	Request for Discontinuance-[Claimant]-ENG
	Post-Hearing Brief-[Claimant]-SPA
	Costs Submissions-[Respondent]-ENG
	Observations to Request for [XX]-[Claimant]-SPA

ANNEX B

PROCEDURAL TIMETABLE

I. Preliminary Objections under CAFTA-DR Article 10.20.5

Date	Interval (period from prior step)	Party / Tribunal	Description
16 August 2019	-	Respondent	Memorial on Preliminary Objections
27 September 2019	6 weeks	Claimants	Counter-Memorial on Preliminary Objections
11 October 2019	2 weeks	Non-Disputing Parties	Non-Disputing Party Submissions, if any
25 October 2019	4 weeks from Counter-Memorial	Respondent	Reply on Preliminary Objections
22 November 2019	4 weeks	Claimants	Rejoinder on Preliminary Objections
27 November 2019, 9:00 a.m. or 2 December 2019 at either 9:00 a.m. or 6:00 p.m. DC	--	All	Pre-hearing Organizational Meeting (by telephone) {*scheduling to be confirmed shortly with the parties*[5]}
16 December 2019 (with morning of 17 December 2019 in reserve)	2 weeks	All	Hearing in Washington, DC
12 February 2020[6]	180 days from Preliminary Objections	Tribunal	Decision on Preliminary Objections

II. Merits (if case continues after Decision on Preliminary Objections)

Date	Interval (period from prior step)	Party / Tribunal	Description

[5] If 2 December 2019 at 9:00 a.m. DC, the President of the Tribunal would participate on her own; if 27 November 2019 at 9:00 a.m. or 2 December 2019 at 6:00 p.m., all three members would participate.
[6] Subject to further extension of up to 30 days for extraordinary cause, pursuant to CAFTA-DR Article 10.20.5.

29 May 2020	15-½ weeks from Decision on Preliminary Objections	Claimants	Memorial
14 September 2020	15-½ weeks from Memorial	Respondent	Counter-Memorial
5 October 2020	3 weeks from Counter-Memorial	Parties	Document Requests
12 October 2020	4 weeks from Counter-Memorial	Non-Disputing Parties	Non-Disputing Party Submissions, if any
26 October 2020	3 weeks from Document Requests	Parties	Responses and/or Objections to Document Requests
2 November 2020	4 weeks from Document Requests	Parties	Production of Documents Not Contested
16 November 2020	3 weeks from Objections	Parties	Reply to Objections to Document Requests (and Schedules Sent to Tribunal)
4 December 2020	2-½ weeks from Schedule	Tribunal	Decision on Disputed Document Requests
8 January 2021	4 weeks + 1 week winter holidays	Parties	Production of Documents Ordered by Tribunal
19 March 2021	10 weeks from 2nd Document Production; 26-½ weeks from Counter-Memorial	Claimants	Reply
23 July 2021	18 weeks from Reply	Respondent	Rejoinder
30 July 2021	1 week	Parties	Notification of Witnesses to be Cross-Examined
2 August 2021	1 business day	Parties	Notification of Additional Witnesses Called for Brief Direct Examination
7 September 2021, 9:00 a.m. DC		All	Pre-hearing Organizational Meeting (by telephone)
6-14 December 2021		All	Hearing in Washington, DC (7 days)

ANNEX C

TEMPLATE FOR DOCUMENT REQUESTS

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