IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNITED STATES-MEXICO-CANADA AGREEMENT

- and -

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)

- between -

Coeur Mining, Inc.

(the "Claimant")

and

United Mexican States

(the "Respondent")

ICSID Case No. UNCT/22/1

PROCEDURAL ORDER No. 5

Tribunal
Ms. Sabina Sacco, President
Mr. Pierre Bienvenu, Ad. E.
Prof. Hugo Perezcano Díaz

Secretary of the Tribunal
Ms. Veronica Lavista

19 June 2024

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I. PROCEDURAL BACKGROUND

1. By letter of 15 March 2024, the Claimant requested the Tribunal to, *inter alia*,[1] order the Respondent to produce certain documents relating to the negotiating history of Annex 14-C of the USMCA, and instruct the United States to produce those documents ("**Claimant's Original Request**"). Specifically, the Claimant requested production of the following documents (the "**Originally Requested Documents**"):

> All documents that the Mexican Government, the United States Government or the Canadian Government (including any of their agencies, officials, or employees) prepared, proposed, or exchanged with one or more of the USMCA Parties or that otherwise pertain to positions taken by any of them, in connection with the negotiation of the investment chapter of USMCA, including Chapter 14 of the USMCA, including previous iterations of that chapter and its provisions […].[2]

2. The Claimant submitted that these documents "show unequivocally that Claimant's interpretation of Annex 14-C is correct—i.e., that the negotiating parties to the USMCA intended to '*allo[w] claims arising out of measures taken against legacy investments during the transition period.*'"[3]

3. On 25 March 2024, the Respondent filed its response to the Claimant's Application (**"Mexico's Response**"). The Respondent submitted that it was "currently unable to unilaterally disclose" the documents sought by the Claimant.[4] This was because the USMCA Parties had concluded a trilateral agreement on confidentiality (the "**Trilateral Confidentiality Agreement**") whereby they agreed to "maintain the confidentiality of all records relating to the negotiating history of the USMCA" for a period of four years after the entry into force of the Trilateral Confidentiality Agreement (period that will end on 1 July 2024).[5] However, the Respondent acknowledged that the Tribunal had "the authority to order the production of the documents in Mexico's possession, custody, or control that relate to the negotiating history of Annex 14-C of the USMCA, provided that the appropriate measures are established to protect the confidentiality of such documents."[6] The Respondent also emphasized that any order for the production of documents should follow a process in which the Respondent was able to raise any objections it might wish to make.[7]

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[1] The Claimant also requested the Tribunal to strike from the record certain legal expert reports submitted by Mexico with its Reply on Jurisdiction and by the United States with its Non-Disputing Party Submission. These requests were addressed in Procedural Order No. 4 issued on 28 May 2024 ("**PO4**").

[2] Claimant's Application, p. 1.

[3] Claimant's Application, p. 2.

[4] Mexico's Response, p. 2.

[5] Mexico's Response, p. 2.

[6] Mexico's Response, p. 2.

[7] Mexico's Response, pp. 1-2.

4. In light of the Claimant's Application and Mexico's Response, on 26 March 2024 the Tribunal suspended the procedural calendar and vacated the hearing dates.

5. On 2 April 2024, after considering the Parties' positions, the Tribunal opened a limited document production phase (the "**Document Production Phase**"), and invited the Parties to confer and revert to the Tribunal on the following points:[8]

   a. Whether the Parties might wish to use this opportunity to request other documents relevant to the jurisdictional phase, as it was the Tribunal's preference that any other document requests in relation to the jurisdictional phase should all be made now;

   b. The relevant steps and timing for this limited document production phase, using as a reference the document production procedure agreed in Procedural Order No. 1;

   c. The terms and timing of a jointly proposed confidentiality order that would apply to the *travaux* should the Tribunal decide to order production.

6. On 9 April 2024, the Parties jointly proposed a revised procedural calendar, and made the following clarifications with respect to the Document Production Phase:[9]

   a. The Claimant stated that "[f]or the avoidance of doubt, [it did] not anticipate making any document requests beyond those relating to the *travaux*."

   b. The Respondent indicated that it did not currently require the production of documents from the Claimant, but reserved the right to do so should the Claimant modify its position or introduce new factual allegations during the jurisdictional phase.

   c. The production of documents would be carried out in accordance with paragraphs 28-39 of Procedural Order No. 1, including paragraphs 34 and 36.

7. On 16 April 2024, the Tribunal confirmed the timetable for the Document Production Phase.[10]

8. On 17 April 2024, the Claimant filed its formal requests for production of documents ("**Claimant's Final Document Requests**") using the Document Production Schedule (the "**Final Requested Documents**"). The Respondent argued that the Claimant expanded the scope of the documents sought. The Claimant also supplemented its requests with certain definitions and instructions.

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[8] Letter to the Parties dated 2 April 2024. The Tribunal also gave directions in relation to the Claimant's request to strike certain expert reports from the record, which are recorded in PO4.

[9] Parties' emails of 9 April 2024.

[10] Letter to the Parties dated 16 April 2024.

9. On 2 May 2024, the Respondent filed its objections to the Claimant's Document Requests ("**Mexico's Objections**"). The Respondent raised general objections, as well as specific objections contained in the relevant column of the Document Production Schedule.

10. On 7 May 2024, the Claimant filed its Reply to Mexico's Objections ("**Claimant's Reply**"). The Claimant responded to the Respondent's general objections, as well as to its specific objections in the relevant column of the Document Production Schedule. The Claimant also narrowed down the scope of its requests.

11. On 12 June 2024, both Parties sent comments regarding the need for a confidentiality order. The Respondent indicated that, while its international obligation of confidentiality under the Trilateral Confidentiality Agreement would expire on 1 July 2024, this did not necessarily mean that the documents covered by that agreement *ipso facto* would become public, and reserved its right to address this issue once this Procedural Order has been issued. The Claimant's position was that the Confidentiality Order contained in Procedural Order No. 3 was sufficient to cover documents produced by the Respondent relating to the *travaux*.

II. SCOPE OF THIS ORDER

12. The present Order addresses the Claimant's Final Document Requests to the Respondent; specifically, the Claimant's request that the Tribunal order the Respondent to produce the Final Requested Documents.[11]

13. To the extent that the Claimant maintains its Original Document Request addressed to the United States (requesting that the Tribunal "instruct" the United States to produce the Originally Requested Documents), this request is denied. The Claimant did not establish that the requested documents should be produced by a Non-Disputing Party.

III. APPLICABLE STANDARDS

14. The rules applicable to document production requests in this arbitration are set out in Section III.B of Procedural Order No. 1 ("**PO1**"). In essence, PO1 provides that: [12]

    a. The Tribunal may refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 (the "**IBA Rules**") for guidance as to the practices commonly accepted in international arbitration, but it shall not be bound to apply them.[13]

    b. Document requests shall be made in accordance with Article 3.3 of the IBA Rules, in the form of the document production schedule set out in Annex C to PO1 (the

[11] Capitalized terms have the meaning given to them herein or in PO1.

[12] PO1, ¶¶ 29-34.

[13] PO1, ¶ 24.

"**Document Production Schedule**"). Article 3.3 of the IBA Rules provides that document requests shall contain:

> (a) (*i*) a description of each requested Document sufficient to identify it, or
>
> (*ii*) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
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> (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
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> (c) (*i*) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
>
> (*ii*) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.]

c. The Requested Party may object to the requests under any of the grounds set out under Art. 9.2, 9.3, and 9.4 of the IBA Rules, directly in the Document Production Schedule.

d. The Requesting Party may respond to the objections in the Document Production Schedule, and at the same time will submit it to the Tribunal so that it can rule on any outstanding requests.

e. The Tribunal notes in particular that Article 9 of the IBA Rules contains provisions as to what documents may be excluded from production,[14] and allows the Tribunal to make suitable confidentiality arrangements to allow the production of confidential or sensitive documents.[15] Specifically, Articles 9.2 to 9.5 of the IBA Rules provide as follows:

> 2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:
>
> (a) lack of sufficient relevance to the case or materiality to its outcome;

[14] Articles 9.2 to 9.4 of the IBA Rules.

[15] Article 9.5 of the IBA Rules.

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);

(c) unreasonable burden to produce the requested evidence;

(d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

(f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or

(g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

3. The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude evidence obtained illegally.

4. In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:

(a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;

(b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;

(c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;

(d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and

(e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.

5. The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit Documents to be produced, and evidence to be presented or considered subject to suitable confidentiality protection.

IV. ANALYSIS

15. In its Final Document Requests, the Claimant seeks the production of three categories of Documents. The Claimant's grounds for production are set out in the relevant column in the Document Production Schedule, a completed version of which is attached hereto as Annex A.

16. The Tribunal addresses certain threshold issues in the sections that follow. The Tribunal's specific analysis of each request is included in the Document Production Schedule attached as Annex A, which forms an integral part of the present Order.

A. Scope of the Claimant's Document Requests

17. The Claimant's Final Document Requests (further to their final formulation in the Claimant's Reply) are as follows:

a. Request No. 1: "Documents exchanged between the Mexican Government Agencies[16] on the one hand, and one or more of the USMCA Parties on the other hand, reflecting the USMCA Parties' negotiation, understanding, or interpretation of the investment chapter of the USMCA, including Chapter 14 of the USMCA (including previous iterations of that Chapter and its provisions)." The temporal scope of this request is from 20 January 2017 to date.

b. Request No. 2: "All internal Documents of the Mexican Government Agencies reflecting Mexico's negotiation, understanding, or interpretation of the investment chapter of the USMCA, including Chapter 14 of the USMCA (including previous iterations of that Chapter and its provisions)." The temporal scope of this request is from 20 January 2017 to date.

c. Request No. 3: "To the extent not already covered by Request Nos. [1 and 2]:[17]

i. An unredacted version of the United States' Reply [in *TC Energy v. USA*[18]], appended to its NDP Submission;

ii. An unredacted version of TC Energy's Rejoinder on Respondent's Preliminary Objection [in *TC Energy v. USA*]; and

iii. The "Produced Documents" exhibited by the claimant in *TC Energy* and the United States to the pleadings referred to in [(i)] and [(ii)]."

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[16] The Claimant defines the "Mexican Government Agencies" as "(i) the Secretariat of Economy (Secretaría de Economía), including the Sub-Secretariat of Foreign Trade (Subsecretaría de Comercio Exterior), (ii) the Secretariat of Foreign Affairs (Secretaría de Relaciones Exteriores), (iii) the Senate Commission on Foreign Relationships (Comisión de Relaciones Exteriores del Senado de la República), and (iv) the President's Office". Claimant's Reply, ¶ 2(b).

[17] The Claimant refers to Requests No. 2 and 3, but the Tribunal understands that this is a typo.

[18] TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, ICSID Case No. ARB/21/63 ("*TC Energy v. USA*" or "*TC Energy*").

The temporal scope of this request is from 12 June 2023 to date.

18. The Respondent objects to both the subject-matter scope and temporal scope of the Claimant's Final Document Requests. In addition to the reasons given in Annex A in support of its objection to each request, the Respondent notes that, in its email of 9 April 2024, the Claimant had indicated that it "d[id] not anticipate making any document requests beyond those relating to the *travaux*."[19] Despite this, the Respondent argues that the scope of the Claimant's final requests "extends much further than the *travaux préparatoires* of Chapter 14 of the USMCA."[20]

19. The Claimant denies that it is prohibited from requesting documents beyond the *travaux préparatoires*. It notes that its Original Document Request sought all documents "in connection with" the negotiation of the investment chapter of the USMCA, which (in its submission) "would include (but not be limited to) the *travaux préparatoires*."[21] The Claimant adds that the Tribunal did not limit the Claimant's requests to the *travaux préparatoires*; to the contrary, it confirmed that the document production phase would be an opportunity for either Party "to request other documents relevant to the jurisdictional phase."[22]

20. The Tribunal recalls that, in its letter of 2 April 2024, it opened a "limited document production phase" and invited the Parties to confer and revert to the Tribunal as to "(i) whether they might wish to use this opportunity to request other documents relevant to the jurisdictional phase, as it is the Tribunal's preference that any other document requests in relation to the jurisdictional phase should all be made now, and (ii) the relevant steps and timing for this limited document production phase, using as a reference the document production procedure agreed in Procedural Order No. 1."[23] By email dated 9 April 2024, the Claimant stated that it did not anticipate making any document requests beyond those relating to the *travaux*.[24]

21. The Tribunal agrees with the Respondent that the Claimant's Final Document Requests extend beyond the *travaux*. To reach that conclusion, it suffices to note that the Final Requested Documents target pleadings submitted and documents produced in *TC Energy v. USA*, to the extent they are not covered by other requests.

22. Despite this, the Tribunal finds that the Claimant's Final Document Requests are admissible, to the extent and as provided in Annex A. While the Claimant stated that it did not "anticipate" making any document requests beyond those relating to the

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[19] Claimant's email of 9 April 2024.

[20] Respondent's Objections, ¶ 1.

[21] Claimant's Reply, ¶ 1(a).

[22] *Ibid*.

[23] Tribunal's letter of 2 April 2024.

[24] Parties' emails of 9 April 2024. See also para. 6 above.

travaux,[25] the Tribunal indicated its preference that "any other document requests in relation to the jurisdictional phase should all be made now."[26]

23. Separately, the Respondent has objected to any reformulation of its requests by the Claimant. The Respondent notes that, although column three of the Document Production Schedule suggests that the Claimant has an opportunity to reformulate its request, para. 31 of PO1 does not cover this. The Respondent further contends that such a reformulation "would prejudice the Respondent and be inconsistent with principles of due process because the Respondent would be deprived of the opportunity to object to any reformulated requests."[27] The Claimant, for its part, asserts that Annex C of PO1 expressly allowed the Requesting Party to reformulate the request.

24. The Tribunal observes that the third column of Annex C of PO1 under "Scope of Request" is entitled "Requesting Party (Reply and reformulation of request, if appropriate)" [emphasis added]. While this possible reformulation is not addressed in the text of PO1, it remains that Annex C forms an integral part of that Order, it was circulated in all iterations of the draft as PO1 was being developed, and it was ultimately accepted by both Parties. In any event, the due process concern raised by the Respondent would only arise if the Requesting Party used this opportunity to change the initial request to introduce new elements to it, or seek to expand it. In this particular case, the Claimant narrowed down the scope of its Requests. In the Tribunal's view, narrowing down a request without introducing additional elements cannot prejudice the Respondent or violate its due process rights.

B. Relevance and Materiality

25. Pursuant to Article 3.3 of the IBA Rules, the Claimant must establish that any Documents[28] sought must be relevant to the case and material to its outcome. Article 9.2(b) of the IBA Rules allows the Tribunal to deny production of any Documents when it determines that they lack sufficient relevance to the case or materiality to its outcome.

26. The Tribunal considers that a Document is "relevant to the dispute" if it bears directly on a factual or legal question at issue in the case that requires proof to be established or rebutted. In turn, a Document is "material to the outcome of the dispute" if it could bear upon the outcome —at the present stage of this case, the question of jurisdiction.

27. The Requesting Party bears the burden of establishing that the Documents are relevant to the dispute and material to its outcome. Accordingly, it must identify the factual or legal question at issue and articulate convincingly how the requested Document or

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[25] Parties' emails of 9 April 2024. See also para. 6 above.

[26] Tribunal's letter of 2 April 2024.

[27] Document Production Schedule, Request No. 1, Respondent's objections to the scope of the request (stating that it applies to all three requests).

[28] The Tribunal will use the Claimant's definition of Document, which mirrors that of the IBA Rules, as reformulated in its Reply, namely, "a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means", except that the Claimant has agreed to limit electronic communications to emails.

Documents could establish or rebut a fact relevant to that question and bear upon the decision on jurisdiction.

28. Because the Tribunal will not have access to the requested Documents unless and until they are put into evidence by one of the Parties with their respective submissions, its assessment of the requested Documents' relevance and materiality can only be done on a *prima facie* basis, based on the Parties' pleadings and submissions to date and the other elements in the record, without prejudice to its power to weigh any evidence that is ultimately filed into the record.

29. The key disputed issue in this jurisdictional phase is whether, in Annex 14-C of the USMCA (which addresses "Legacy Investment Claims and Pending Claims"), the Contracting Parties to the USMCA consented to arbitrate claims for alleged breaches of the NAFTA arising from acts that occurred during the three years following the termination of the NAFTA (i.e., between 1 July 2020 and 1 July 2023, the period referred to by the Claimant as the "Transition Period"). The Respondent argues that the Contracting Parties did not so consent (the Respondent's "**Objection *Ratione Voluntatis***"). The Claimant, by contrast, argues that they did.

30. More specifically, in its Counter-Memorial on Jurisdiction, and invoking the rules of treaty interpretation contained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("**VCLT**"), the Claimant argues that the ordinary meaning, context, object and purpose of Annex 14-C confirm that the Claimant may submit claims for breaches of the NAFTA arising from measures taken during the Transition Period.[29] The Claimant also argues that this is confirmed by supplementary means of interpretation.[30] With its Original and Final Document Requests, the Claimant is seeking production of the negotiating history of the USCMA and other related Documents. The Claimant alleges that these Documents qualify as additional supplementary means of interpretation of the treaty pursuant to Article 32 of the VCLT and contends that they are relevant and material to resolving the Respondent's preliminary objection.[31]

31. As the Contracting Parties' offer to arbitrate legacy investment claims is contained in Annex 14-C of the USMCA, the question before the Tribunal is squarely one of treaty interpretation. The rules on treaty interpretation are set out in Articles 31 and 32 of the VCLT. Article 31 of the VCLT provides the general rule of interpretation, as follows:

> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

[29] C-Counter-Memorial on Jurisdiction, ¶¶ 19-44.

[30] C-Counter-Memorial on Jurisdiction, ¶¶ 45-58.

[31] See, e.g., Claimant's Original Document Request, p. 5; Claimant's Final Document Requests, Requests 1, 2 and 3, Statement of relevance and materiality and Reply on relevance and materiality.

> (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
>
> (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
>
> 3. There shall be taken into account, together with the context:
>
> (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
>
> (c) any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended.

32. In turn, Article 32 of the VLCT refers to supplementary means of interpretation, as follows:

> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous or obscure; or
>
> (b) leads to a result which is manifestly absurd or unreasonable.

33. In determining the relevance and materiality of the Final Requested Documents, the Tribunal took these provisions into consideration.

C. Confidentiality

34. The Respondent objects to Claimant's Requests No. 1 and 2 on the grounds of legal impediment. More specifically, the Respondent submits that it is unable to unilaterally disclose these Documents on a voluntary basis prior to 1 July 2024 because it is bound by the Trilateral Confidentiality Agreement.

35. Pursuant to the Trilateral Confidentiality Agreement:[32]

> First, the negotiating parties agree that negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are provided and will be held in confidence by the recipients, unless each negotiating party whose positions are

[32] **RL-0058,** USMCA Trilateral Confidentiality Agreement, p. 1.

> referred to in a communication agrees to its release. This means that the documents may be provided only to (1) government officials or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information in these documents. Anyone given access to the documents will be informed that they cannot share the documents with people not authorized to see them. The negotiating parties have agreed to hold these documents in confidence for four years after entry into force of the results of this negotiation, or if no agreement enters into force, for four years after the last round of negotiations. However, these restrictions will not apply to negotiating parties regarding their own position. The negotiating parties will be free to disclose that information on condition that, absent consent of the applicable other negotiating party, any reference to positions of other parties or agreed text is not included in that disclosure.

36. The Tribunal notes that the confidentiality obligations agreed in the Trilateral Confidentiality Agreement apply to "negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations" (the Tribunal will refer to these Documents as the "**USMCA Negotiating Documents**").

37. It is common ground that under the procedural calendar agreed by the Parties, by the time Mexico will be called upon to produce any Documents pursuant to this Order, the confidentiality obligations that apply to the USMCA Negotiating Documents pursuant to the Trilateral Confidentiality Agreement will have expired. Accordingly, the legal impediment alleged by the Respondent with respect to any USMCA Negotiating Documents will have disappeared. Therefore, to the extent that the Tribunal orders production of USMCA Negotiating Documents, the Respondent's objection will no longer have a legal basis.

38. The Parties have discussed the need for a confidentiality order to protect the confidentiality of any USMCA Negotiating Documents. The Claimant argues that the confidentiality protections in Procedural Order No. 3 ("PO3") are sufficient. The Respondent, for its part, has reserved its rights to address this question once the Tribunal has issued this Order. The Tribunal prefers to defer the determination of this question until after the Parties have reviewed the Documents required to be produced under this Order. It therefore invites the Parties to confer as to whether the confidentiality protections set out in PO3 provide appropriate protection to the Documents to be produced pursuant to this Order, or whether additional protections must be established. The Parties shall revert to the Tribunal within 21 days of this Order, indicating whether (i) they agree that PO3 provides sufficient protection, or (ii) they agree that additional protections are required, in which case they shall propose a draft confidentiality order that addresses these additional protections, or (iii) they disagree, in which case both Parties shall indicate their reasons and the Respondent shall propose the text of the additional protections it requires.

39. The Respondent shall indicate, as soon as possible and at the latest on the date scheduled for document production, whether it objects to the production of specific documents

based on claims of legal impediment or privilege, technical or commercial confidentiality, or special political or institutional sensitivity. In that case, the procedure set out at para. 36 of PO1 shall apply, with an abbreviated schedule that will be determined in a separate Order.

D. Specific analysis

40. The Tribunal's analysis and decision with respect to each of the Claimant's Document Requests are contained in Annex A.

V. ORDER

41. For the reasons set out above and in Annex A, the Tribunal:

    a. GRANTS in part Requests No. 1 and 2, as limited in Annex A;

    b. DENIES Request No. 3; and

    c. DENIES the Claimant's Original Document Request with respect to the United States of America.

42. In accordance with the procedural timetable set out in the Tribunal's letter dated 16 April 2024, the Respondent shall produce the documents that the Tribunal has ordered it to produce within 30 days of this Order, i.e., by **19 July 2024.** The rules for production set out at paras. 34 to 39 of PO1 shall apply.

43. Within 21 days of this Order (i.e., by **10 July 2024**) the Parties shall revert to the Tribunal as to the need for additional confidentiality protections that would apply to Documents produced under this Order, as instructed in para. 38 above.

44. As soon as possible, and at the latest by **19 July 2024**, the Respondent shall indicate if it objects to the production of specific Documents based on claims of legal impediment or privilege, technical or commercial confidentiality, or special political or institutional sensitivity privilege and confidentiality.

45. The Tribunal reserves its decision on costs for a later stage.

On behalf of the Tribunal,

[Signed]

Sabina Sacco
President of the Tribunal

Date: 19 June 2024