

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Lion Mexico Consolidated L.P.

v.

United Mexican States

(ICSID Case No. ARB(AF)/15/2)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Juan Fernández-Armesto, President of the Tribunal

Mr. David J.A. Cairns, Arbitrator

Mr. Ricardo Ramírez, Arbitrator

Secretary of the Tribunal

Mrs. Anneliese Fleckenstein

Assistant to the Tribunal

Mr. Luis Fernando Rodríguez

October 14, 2016

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Introduction

The first session of the Tribunal was held on September 26, 2016, at 10:00 a.m. (EDT), by telephone conference.

Participating in the conference were:

Members of the Tribunal

Mr. Juan Fernández-Armesto, President of the Tribunal

Mr. David J.A. Cairns, Arbitrator

Mr. Ricardo Ramírez, Arbitrator

ICSID Secretariat:

Mr. Francisco Grob, Legal Counsel at ICSID

Assistant to the Tribunal:

Mr. Luis Fernando Rodríguez (Armesto & Asociados)

Attending on behalf of the Claimant:

Mr. Robert J. Kriss	Mayer Brown
Mr. Dany Khayat	Mayer Brown
Mr. Alejandro López Ortiz	Mayer Brown
Mr. José Caicedo	Mayer Brown
Ms. Onay Payne	Lion Mexico Consolidated L.P.
Ms. Renée Castro	Lion Mexico Consolidated L.P.

Attending on behalf of the Respondent:

Ms. Leticia Ramírez Aguilar	Dirección de Consultoría Jurídica de Comercio Internacional - Secretaría de Economía
Ms. Cindy Rayo Zapata	Dirección de Consultoría Jurídica de Comercio Internacional - Secretaría de Economía
Ms. Samantha Atayde Arellano	Dirección de Consultoría Jurídica de Comercio Internacional - Secretaría de Economía
Mr. J. Cameron Mowatt	J. Cameron Mowatt, Law Corporation
Mr. Alejandro Barragán	J. Cameron Mowatt, Law Corporation
Ms. Ximena Iturriaga	J. Cameron Mowatt, Law Corporation

The Tribunal and the parties considered the following:

- The Draft Agenda and the Draft Procedural Order circulated by the Tribunal Secretary on August 18, 2016; and

- The parties' comments on the Draft Agenda and the Draft Procedural Order received on September 12, 2016 and September 25, 2016, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The session was adjourned at 12:05 p.m. (EDT).

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.

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

Order

Pursuant to Articles 21 and 28 of the ICSID Arbitration (Additional Facility) Rules, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex A**.

1. **Applicable Law and Arbitration Rules**

Article 1, 28(2), 35 and 54 of the ICSID Arbitration (Additional Facility) Rules; Articles 1120(2) and 1131 of the NAFTA

1.1. These proceedings are conducted in accordance with the ICSID Arbitration (Additional Facility) Rules in force as of April 10, 2006, except to the extent that they are modified by Section B, Chapter 11 of the North American Free Trade Agreement.

1.2. Pursuant to Article 1131 of the North American Free Trade Agreement this Tribunal shall decide the issues in dispute in accordance with the North American Free Trade Agreement and applicable rules of international law. An interpretation by the Commission of a provision of the North American Free Trade Agreement shall be binding on this Tribunal.

2. **Constitution of the Tribunal and Tribunal Members' Declarations**

Article 13 of the ICSID Arbitration (Additional Facility) Rules

2.1. The Tribunal was constituted on July 27, 2016 in accordance with the ICSID Arbitration (Additional Facility) 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 Article 13(1) of the ICSID Arbitration (Additional Facility) Rules. Copies of these declarations were distributed to the parties by the ICSID Secretariat on July 27, 2016.

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

2.4. The contact details of the Tribunal Members are as follows:

Juan Fernández-Armesto Armesto & Asociados General Pardiñas , 102 28006 Madrid – Spain Tel.+34 91 562 1625	David J.A. Cairns B. Cremades y Asociados Goya, 18; Planta 2, 28001 Madrid, Spain Tel. +34 91 423 7200	Ricardo Ramírez RRH Consultores, S.C. Islote 71, Colonia Las Águilas Álvaro Obregón C.P. 01710, Mexico, D.F. Mexico Tel. +52 55 5635-1732
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3. Fees and Expenses of Tribunal Members

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 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

Articles 22(2) and 28(1) of the ICSID Arbitration (Additional Facility) Rules

4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, except that for hearings, the presence in person of all Members of the Tribunal is required.

5. Decisions and Procedural Rulings of the Tribunal

Articles 24 and 27 of the ICSID Arbitration (Additional Facility) Rules

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Article 24(2) of the ICSID Arbitration (Additional Facility) Rules applies to decisions taken by correspondence except that 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 President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.4. 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

Article 33 of the ICSID Arbitration (Additional Facility) Rules

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 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 Anneliese Fleckenstein, 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:

Anneliese Fleckenstein
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-4038
Fax: + 1 (202) 522-2615
Email: afleckenstein@worldbank.org
Paralegal email: dsotogarcia@worldbank.org

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

ICSID Reception
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Assistant to the Tribunal

- 8.1. The President communicated to the parties his intention to appoint Mr. Luis Fernando Rodriguez as Assistant to the Tribunal. Mr. Rodriguez works as an Associate at Armesto & Asociados. The parties and the Tribunal received Mr. Rodriguez’s *curriculum vitae* and his declaration of independence and impartiality on September 9, 2016. With the express agreement of the parties, the Tribunal hereby proceeds to appoint Mr. Luis Fernando Rodríguez as Assistant to the Tribunal.
- 8.2. The Assistant to the Tribunal shall undertake to facilitate the arbitral process and complete such tasks as are placed under his purview or specifically assigned to him by the Arbitral Tribunal or the President.
- 8.3. The Assistant to the Tribunal shall be paid by the President for his work. He will be reimbursed by the parties for his travel and transportation expenses only.
- 8.4. The Assistant to the Tribunal shall be bound by the same duties of confidentiality and privacy as the Arbitral Tribunal.
- 8.5. The contact details of Mr. Rodriguez are the following:

Luis Fernando Rodriguez Garcia
ARMESTO & ASOCIADOS
General Pardiñas, 102
28006 Madrid
Tel: 91 562 16 25
Fax: 91 515 91 45
E-mail: lfr@jfarmesto.com

9. Representation of the Parties

Article 26 of the ICSID Arbitration (Additional Facility) Rules

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

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Procedural Order No. 1

For Claimant

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J. Cameron Mowatt, Law Corporation
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10. Apportionment of Costs and Advance Payments to ICSID
Administrative and Financial Regulation 14; Articles 28(1)(f) and 58 of the ICSID

Arbitration (Additional Facility) Rules

- 10.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. By letter of August 1, 2016, ICSID requested that each party pay US\$100,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on August 8, 2016. Not having received Respondent's payment, on October 12, 2016, ICSID sent a default letter inviting either party to pay the outstanding advance.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed *interim* statement of account.

11. Place of Arbitration

Administrative and Financial Regulation 26; Articles 19 and 20 of the ICSID Arbitration (Additional Facility) Rules

- 11.1. After receiving the parties' positions on the matter, the Tribunal shall establish the place of arbitration in a separate order.
- 11.2. The Tribunal may hold hearings at any place that it considers appropriate if the parties so agree.
- 11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Languages, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Article 30 of the ICSID Arbitration (Additional Facility) Rules

- 12.1. English and Spanish are the procedural languages of the arbitration.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

For Parties' Pleadings

- 12.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language.
- 12.4. Any document written in a language other than the procedural languages must be translated in whole or in part in either procedural language.
- 12.5. 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.

- 12.6. Documents exchanged between the parties under §17 below (Production of Documents) may be produced in the original language and need not be translated.

For Hearing

- 12.7. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language. The testimony of a witness called for examination during the hearing who prefers to give evidence in a language other than a procedural language shall be interpreted simultaneously into one of the procedural languages.
- 12.8. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require services of interpretation.
- 12.9. 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.

For Tribunal's Documents Except the Award

- 12.10. The Tribunal shall make any order or decision in either procedural language.

For Tribunal's Award

- 12.11. The Tribunal shall render the Award in Spanish and English concurrently.

13. IBA Rules as Guidelines for Rulings on Evidence

- 13.1. In regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this procedural order, the AF Rules or NAFTA Chapter 11, the Tribunal may refer to the *IBA Rules on the Taking of Evidence in International Arbitration* (2010 version) for guidance as to practices commonly accepted in international arbitrations, but it shall not be bound to apply them.

14. Routing of Communications

Administrative and Financial Regulation 24

- 14.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 14.2. 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 only after both sides have submitted

their respective communications.

14.3. 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.

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

Juan Fernández-Armesto	David J.A. Cairns	Ricardo Ramírez
jfa@jfarmesto.com	d.cairns@bcremades.com	ricardoramirez@derecho.unam .mx

15. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Articles 31 and 32 of the ICSID Arbitration (Additional Facility) Rules

15.1. 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 a list of documents,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

15.2. Within two business days following the electronic filing, the parties shall courier to the Tribunal Secretary:

15.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

15.2.2. one hard copy in A4/Letter format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

15.2.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

15.3. Also within the two business days following the electronic filing, the parties shall courier to the opposing party at the addresses indicated at §9.1 above:

15.3.1. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, the witness the witness statements, expert reports, documents and legal authorities; and

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

² The A4/Letter format is required for ICSID's archiving.

- 15.4. Also within the same two business days, the parties shall courier to each Member of the Tribunal at the addresses indicated at §2.4:
 - 15.4.1. one hard copy in A5 format of the submission, including the pleading, the witness statements and expert reports (but not including exhibits or legal authorities); and
 - 15.4.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents and legal authorities.
 - 15.5. The Tribunal may request the parties to produce a hard copy of any document filed electronically.
 - 15.6. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).
 - 15.7. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
 - 15.8. 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.
 - 15.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
16. Number and Sequence of Pleadings
Articles 33 and 38 of the ICSID Arbitration (Additional Facility) Rules
- 16.1. The Claimant shall file a Memorial within three months after the Tribunal issues a decision on the preliminary objection that the Respondent filed on August 24, 2016, under Article 45(6) of the ICSID Arbitration (Additional Facility) Rules.
 - 16.2. The Respondent shall file a Counter-Memorial within three months following the filing of Claimant's Memorial.
 - 16.3. The Claimant shall file a Reply within two months following the filing of Respondent's Counter-Memorial.
 - 16.4. The Respondent shall file a Rejoinder within two months following the filing of Claimant's Reply.
 - 16.5. In the event that the Respondent decides to raise further objections to jurisdiction and requests that these objections be heard separately from the merits of the case (i.e. a request for bifurcation):

- 16.5.1. The Respondent will make a request for bifurcation within one month of the filing of the Claimant's Memorial, providing a summary of the jurisdictional objections;
- 16.5.2. The Claimant will be granted an opportunity to make any observations with respect to the Respondent's request for bifurcation within one month of the submission of the Respondent's request for bifurcation;
- 16.5.3. The Tribunal will use its best efforts to issue a decision with respect to the Respondent's request for bifurcation within one month of the submission of the Claimant's observations on the Respondent's request for bifurcation;
- 16.5.4. The proceedings on the merits shall be suspended from the date of the submission of the Respondent's request for bifurcation. Should the Tribunal decide:
 - a) not to bifurcate the proceedings, then the suspension shall be lifted and the proceedings shall continue as set out in Annex A.
 - b) to bifurcate the proceedings, then the Tribunal shall establish a separate calendar for the submission of pleadings on jurisdiction after consultation with the Parties; in the meantime, the proceedings on the merits shall remain suspended.

17. Production of Documents

Article 41 of the ICSID Arbitration (Additional Facility) Rules.

- 17.1. Each party shall be entitled to request production of documents at the stages set out in Annex A.
- 17.2. The Tribunal shall issue, in due course and after consultation with the parties, a Procedural Order with specific instructions and exact dates for the production of documents.

18. Submission of Documents

Administrative and Financial Regulation 30; Article 32 of the ICSID Arbitration (Additional Facility) Rules

- 18.1. 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.
- 18.2. The documents shall be submitted in the manner and form set forth in §18.5 below.
- 18.3. 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.

18.3.1. 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.

18.3.2. 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.

18.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 41(2) of the ICSID Arbitration (Additional Facility) Rules.

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

18.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

18.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter "C-" for factual exhibits and "CL-" for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter "R-" for factual exhibits and "RL-" for legal exhibits containing authorities etc.

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

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

18.5.5. Exhibits shall also be submitted in PDF format and start with the number "C-0001" and "R-0001," respectively.

18.5.6. 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.

18.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.

18.7. 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 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 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.

19. Witness Statements and Expert Reports

Article 32 of the ICSID Arbitration (Additional Facility) Rules

- 19.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 19.2. 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.
- 19.3. Each witness statement and expert report shall be signed and dated by the witness and include:
 - 19.3.1. a disclosure statement detailing any past and present relations of the witness with any party, counsel or the Tribunal;
 - 19.3.2. a description of the witness' position and qualifications, if relevant;
 - 19.3.3. a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
 - 19.3.4. any documents on which the witness relies that have not already been submitted (which shall be provided as annexes to the witness statement);
 - 19.3.5. a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing;
 - 19.3.6. an affirmation of the truth of the Witness Statement.
 - 19.3.7. Witness Statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
 - 19.3.8. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 19.4. Expert Reports shall be dated and signed by the expert or experts and contain:
 - 19.4.1. the full name of the expert;
 - 19.4.2. a disclosure statement detailing any past and present relations of the expert with any party, counsel or the Tribunal;

- 19.4.3. a brief description of the expert's qualifications;
- 19.4.4. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
- 19.4.5. a statement of his or her independence from the parties, their legal advisors and the Tribunal;
- 19.4.6. a statement of the facts on which he or she is basing his or her expert opinions and conclusions;
- 19.4.7. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
- 19.4.8. the documents used or relied on by the expert in the preparation of his or her report (which shall be provided as annexes to the report);
- 19.4.9. an affirmation of his or her genuine belief in the opinions expressed in the report;
- 19.4.10. Expert Reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs as well as a detailed table of contents.

20. Examination of Witnesses and Experts
Article 42 and 43 of the ICSID Arbitration (Additional Facility) Rules

- 20.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 20.2. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 20.3. The parties shall notify the opposing party which witness and experts it intends to call for cross-examination within four weeks after completion of the Written Procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.
- 20.4. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.
- 20.5. Direct examination is given in the form of Witness Statements and Expert Reports. However, the party presenting the witness or expert may conduct a brief direct examination at the hearing, limited to the content of their corresponding Witness Statement or Expert Report. Any witness called for direct examination may be cross-examined by the other party and questioned by the Tribunal.

- 20.6. Subject to the direction of the Tribunal as to relevance and fairness, there shall be no limitation on the scope of the cross-examination to the contents of the Witness Statement or Expert Report. Re-direct examination shall be limited to the subject of cross-examination.
- 20.7. Before giving evidence, witnesses shall make the following declaration: “*I solemnly declare upon my honour and conscience that I shall speak the truth, the whole truth and nothing but the truth*”, and experts shall make the following declaration: “*I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.*”
21. Pre-Hearing Organizational Meetings
Article 29 of the ICSID Arbitration (Additional Facility) Rules
- 21.1. A pre-hearing organizational meeting shall be held at 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.
22. Hearings
Article 21(2) of the ICSID Arbitration (Additional Facility) Rules
- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. The hearing shall be held at a place to be determined in accordance with §11 above.
- 22.3. The hearing shall take place on at a date to be determined by the Tribunal at a later stage upon consultation with the parties.
- 22.4. 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.
- 22.5. The principle of equal allocation of time between the Parties shall be observed in the conduct of all hearings.
- 22.6. Hearings shall be closed to the public. However, provisions shall be made for representatives of the other NAFTA Parties to attend the hearing upon request.
23. Records of Hearings and Sessions
Article 28(1)(g) of the ICSID Arbitration (Additional Facility) Rules
- 23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 23.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing

and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall 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.

23.3. The parties shall agree on any corrections to the transcripts within period to be decided later on in this proceeding. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs
Article 58(1) of the ICSID Arbitration (Additional Facility) Rules

24.1. Post-hearing memorials and statement of costs will be submitted by the Parties according to a schedule to be decided during the Hearing.

25. Publication
Administrative and Financial Regulation 22, Article 53(3) of the ICSID Arbitration (Additional Facility) Rules

25.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

26. Amicus Curiae and Non-Disputing Party Submissions
Article 41(3) of the ICSID Arbitration (Additional Facility) Rules; Article 1128 of the NAFTA; FTC Note of 31 July 2001

26.1. The Tribunal will decide on how to address any *amicus curiae* or Non-Disputing Party request after hearing the parties.

[Signed]

Mr. Juan Fernández-Armesto
President of the Tribunal
Date: October 14, 2016

Annex A – Timetable

1. MAIN CALENDAR

Starting date: Tribunal’s decision on Art. 45(6) preliminary objection	
Three months later	Claimant’s Memorial
Three months later	Respondent’s Counter-Memorial
Two months later	Claimant’s Reply
Two months later	Respondent’s Rejoinder
Subsequently	Hearing
Subsequently	Simultaneous post-hearing briefs
Subsequently	Simultaneous submissions on costs

2. CALENDAR FOR JURISDICTIONAL OBJECTIONS AND BIFURCATION

If the Respondent raises further objections to jurisdiction and requests that these objections be heard separately from the merits of the case (i.e. a request for bifurcation):

Starting date: Filing of the Claimant’s Memorial	
One month later	Respondent’s request for bifurcation and summary of jurisdictional objections
One month later	Claimant’s observations on the request for bifurcation
One month later	Tribunal’s decision on bifurcation
The proceedings on the merits shall be suspended from the date of the submission of the Respondent’s request until the date of the Tribunal’s decision. Should the Tribunal decide:	
A. not to bifurcate the proceedings	then the suspension shall be lifted and the proceedings shall continue as set forth in the main calendar <i>supra</i> , with the following amendments: – Respondent shall file its Counter-Memorial on the merits (together with its Memorial on jurisdictional objections) on the date of the original deadline, extended for the number of days the proceedings remained suspended. – Claimant shall file its Reply on the merits (together with its Counter-Memorial on jurisdictional objections) two months later.

	<ul style="list-style-type: none"> – Respondent shall file its Rejoinder on the merits (together with its Reply on jurisdictional objections) two months later. – Claimant shall file its Rejoinder on jurisdictional objections one month later.
B. to bifurcate the proceedings	then the Tribunal shall establish a separate calendar for the exchange of pleadings on jurisdiction after consultation with the Parties. The proceedings on the merits shall remain suspended until the Tribunal decides otherwise.

3. CALENDAR FOR DOCUMENT PRODUCTION REQUESTS

Starting date: Claimant's Memorial on the merits	
Two weeks later	Respondent's request for documents production
One week later	Claimant's response to Respondent's request
One week later	Respondent's reply to Claimant's response
One week later	Submission of the document production schedule to the Tribunal
	Claimant's production of non-contested documents
Ten days later	Tribunal's decision
One week later	Production of contested documents and affidavits
Starting date: Respondent's Counter-Memorial	
Two weeks later	Claimant's request for documents production
One week later	Respondent's response to Claimant's request
One week later	Claimant's reply to Respondent's response
One week later	Submission of the document production schedule to the Tribunal
	Respondent's production of non-contested documents
Ten days later	Tribunal's decision
One week later	Production of contested documents and affidavits