

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

B-Mex, LLC and others

v.

United Mexican States

(ICSID Case No. ARB(AF)/16/3)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Dr. Gaëtan Verhoosel, President of the Tribunal

Prof. Gary Born, Arbitrator

Prof. Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal

Mr. Francisco Grob

April 4, 2017

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Introduction

The first session of the Tribunal was held on March 28, 2017, at 11:00 a.m. EDT, by telephone conference. The session was adjourned at 11:45 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 on March 30, 2017.

Participating in the conference were:

Members of the Tribunal

Dr. Gaëtan Verhoosel, President of the Tribunal
Prof. Gary Born, Arbitrator
Prof. Raúl E. Vinuesa, Arbitrator

ICSID Secretariat:

Ms. Anneliese Fleckenstein

On behalf of the Claimants:

David Orta (Quinn Emanuel Urquhart & Sullivan, LLP)
Daniel Salinas (Quinn Emanuel Urquhart & Sullivan, LLP)
José Pereyó (Quinn Emanuel Urquhart & Sullivan, LLP)
Diego Durán de la Vega (Quinn Emanuel Urquhart & Sullivan, LLP)
Julianne Jaquith (Quinn Emanuel Urquhart & Sullivan, LLP)
Andrea Acuña ((Quinn Emanuel Urquhart & Sullivan, LLP)
Julio Gutierrez Morales (Ríos-Ferrer Guillén-Llarena, Treviño y Rivera S.C.)
Mr. Gordon Burr, Ms. Erin Burr, and Mr. Neil Ayervais

On behalf of the Respondent:

Samantha Atayde Arellano (Directora General de Consultoría Jurídica de Comercio Internacional)
Leticia Margarita Ramírez Aguilar (Directora General Adjunta de Consultoría Jurídica de Comercio Internacional)
Geovanni Hernández Salvador (Director de Consultoría Jurídica de Comercio Internacional)
J. Cameron Mowatt (J. Cameron Mowatt, Law Corporation)
Alejandro Barragán (J. Cameron Mowatt, Law Corporation)
Ximena Iturriaga (J. Cameron Mowatt, Law Corporation)

The Tribunal and the parties considered the Draft Procedural Order No. 1 circulated by the ICSID Secretariat on March 8, 2017; the parties' joint annotated draft received on March 21, 2017; the Claimants' letter of the same date; and the Claimants' and the Respondent's respective communications of March 24, 2017.

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

Order

Pursuant to Articles 21(1) 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 Arbitration Rules**

Article 1, 28(2), 35 and 54 of the ICSID Arbitration (Additional Facility) Rules, Article 1120(2) 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 of NAFTA Chapter Eleven.

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 February 14, 2017, in accordance with the ICSID Arbitration (Additional Facility) Rules and NAFTA Chapter Eleven. The parties confirmed that the Tribunal was properly constituted and that no party has any objection in respect of the independence or impartiality of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with Article 13(2) of the ICSID Arbitration (Additional Facility) Rules. Copies of these declarations were distributed to the parties by the ICSID Secretariat.

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:

Gaëtan Verhoosel	Gary Born	Raúl E. Vinuesa
Three Crowns	WilmerHale	Alsina 2360 – San Isidro
New Fetter Place	49 Park Lane	(1642)
8-10 New Fetter Lane	London, W1K 1PS	Buenos Aires
London EC4A 1AZ	United Kingdom	Argentina
United Kingdom	Tel. +44 20 7872 1020	Tel. +54 11 4723-6664
Tel.+44 20 3530 7970		

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).
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 Mr. Francisco Grob, 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:

Francisco Grob
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-5072
Fax: + 1 (202) 522-2615
Email: fgrob@worldbank.org
Paralegal email: galonsoghersi@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) 458-1534

8. Representation of the Parties

Article 26 of the ICSID Arbitration (Additional Facility) Rules

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

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9. 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

- 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 February 15, 2017, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on March 17, 2017. At the first session of the Tribunal on March 28, 2017, Respondent confirmed that it was in the process of authorizing payment of its share of the initial costs of the proceeding. As at the date of this Procedural Order No.1, ICSID has not received Respondent's payment.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

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

- 10.1. Toronto, Canada shall be the seat of arbitration.
- 10.2. The Tribunal may, in consultation with the parties, hold hearings at any other place that it considers appropriate. Respondent agrees that this may include the World Bank facilities in Washington, D.C., United States.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Article 30 of the ICSID Arbitration (Additional Facility) Rules

- 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.

For Parties' Pleadings

- 11.3. Written requests or applications may be submitted in either procedural language, provided that the Parties provide a translation into the other procedural language within 10 business days thereafter.

- 11.4. Pleadings, expert opinions and witness statements may be submitted in either procedural language, provided that a translation into the other procedural language is filed within 15 business days thereafter in accordance with § 13 below.
- 11.5. Exhibits and legal authorities in English need not be translated into Spanish. Exhibits and legal authorities in a language other than English must be translated into English. If such document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require, upon a request by a Party or upon its own initiative, a fuller or a complete translation.
- 11.6. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal decides to request a certified translation.
- 11.7. Documents exchanged between the parties under § 15 below (Production of Documents) may be produced in the original language and need not be translated.
- 11.8. 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.

For Hearing

- 11.9. 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.
- 11.10. 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 both procedural languages.
- 11.11. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see § 19.1 below), which witnesses or experts require services of interpretation.
- 11.12. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

For Tribunal's Documents Except the Award

- 11.13. The Tribunal shall make any order or decision in both procedural languages. For urgent matters, the Tribunal may issue a decision in one of the procedural languages with an equally authentic version in the other procedural language following as soon as possible thereafter.

For Tribunal's Award

11.14. The Tribunal shall render the Award in both procedural languages concurrently.

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:

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[Gaetan.Verhoosel@threecrow
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Gary Born

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Raúl E. Vinuesa

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13. 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

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary, the opposing party and the Tribunal Members an electronic version of the pleading with witness statements, expert reports and a list of exhibits and legal authorities (the "electronic filing"),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.

13.2. Within 3 business days following the electronic filing, the parties shall courier to the Tribunal Secretary:

13.2.1. one unbound hard copy in A4 or Letter format² of the entire submission in consecutive order as provided in § 16.5 below, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);

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.

- 13.2.2. one bound hard copy in A5 format (or in A4 or Letter format if a party is unable to produce copies in A5 format) of the entire submission including the pleading, the witness statements, and expert reports (but not including legal authorities and/or exhibits); and
- 13.2.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits and legal authorities.
- 13.3. Also within 3 business days following the electronic filing, the parties shall courier to the opposing party at the addresses indicated at § 8.1 above and to each Member of the Tribunal at the addresses indicated at § 2.4 above:
 - 13.3.1. one bound hard copy in A4 format of the entire submission including the pleading, the witness statements, expert reports and exhibits (but not including legal authorities);
 - 13.3.2. at least one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits and legal authorities.
- 13.4. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).
- 13.5. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
- 13.6. 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.
- 13.7. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
- 13.8. Legal authorities shall be submitted in electronic format only, unless a hard copy is requested by the Tribunal.
- 14. Number and Sequence of Pleadings
Articles 33 and 38 of the ICSID Arbitration (Additional Facility) Rules
 - 14.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex A, except if the Tribunal, upon a showing of good cause by either party or on its own initiative, decides that this Procedural Timetable requires amendment.
 - 14.2. By agreement of the Parties, the Tribunal has (i) bifurcated the proceeding and (ii) determined the Procedural Timetable only for the phase of this arbitration addressing Respondent's jurisdictional objections. The Procedural Timetable for

the merits phase (if necessary) will be determined in consultation with the parties following the issuance of the Tribunal's Decision on Respondent's jurisdictional objections.

15. Production of Documents

Article 41 of the ICSID Arbitration (Additional Facility) Rules

- 15.1. The International Bar Association Rules on the Taking of Evidence in International Arbitration (2010), to the extent they are consistent with the ICSID Arbitration (Additional Facility) Rules, may guide the Tribunal and the parties regarding document production (and any other evidentiary matters) in this case but shall not be binding on either the Tribunal or the Parties.
- 15.2. By the date set forth in the Procedural Timetable in Annex A, any party may submit to the other party (and without copying the Tribunal or the Tribunal Secretary) a request for document production in the form of a Redfern Schedule (a template of which is set out in Annex B). Any such request shall contain:
 - 15.2.1. a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
 - 15.2.2. a statement as to how the documents requested are relevant to the case and material to its outcome; and
 - 15.2.3. a statement that the documents requested are not in the possession, custody or control of the requesting party, and a statement of the reasons why the requesting party assumes the documents requested are in the possession, custody or control of the other party.
- 15.3. The party who receives a request for document production shall either produce the requested documents in relation to which it makes no objection, or object to the request in the column designated for such objection in the Redfern Schedule provided by the requesting party, by the date specified in the Procedural Timetable in Annex A. The Redfern Schedule with the objections shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.4. If a party only objects to a portion of a request, or if it has in its possession, custody or control documents that are responsive to a request but which are not implicated by its objection to that request, then it shall produce those documents by the date specified in the Procedural Timetable in Annex A even though it may withhold other documents which are implicated by its objection.
- 15.5. The requesting party may reply to the other party's objections (if any) in the column designated in the Redfern Schedule for such reply, and then submit the completed

Redfern Schedule (with parties' aggregate comments) to the Tribunal, by the date specified in the Procedural Timetable in Annex A. The Tribunal shall endeavor to rule on any disputed requests for document production on or before the time-limit established in the Procedural Timetable in Annex A.

15.6. Documents produced in accordance with this § 15 shall be communicated electronically (via email, file sharing platform or USB drive) directly to the requesting party without copying the Tribunal or the Tribunal Secretary.

15.7. Documents produced pursuant to this Section (either voluntarily or by order of the Tribunal) shall not be considered on the record unless and until the requesting party subsequently files them as exhibits in accordance with the Procedural Timetable for this arbitration and the terms of this or any other applicable procedural order or ruling.

16. Submission of Documents

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

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, except with leave from the Tribunal, to be granted upon a showing of good cause.

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

16.3.2. If the Tribunal grants leave 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 Article 41(2) of the ICSID Arbitration (Additional Facility) Rules.

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.
- 16.5.6. 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.
- 16.6. 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.
- 16.7. 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 exhibit or legal authority 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 (3), the Tribunal Secretary and interpreters (1) immediately prior to the respective presentation for which it is used, and subsequently send them by email to the Tribunal Secretary and to the other party in electronic format.

17. Witness Statements and Expert Reports

Article 32 of the ICSID Arbitration (Additional Facility) Rules

- 17.1. Witness statements and expert reports and their supporting documentation (if any) 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 a good cause exists based on a reasoned written request by a party 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.

- 17.4. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 17.5. It shall not be improper for a disputing party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.

18. Examination of Witnesses and Experts

Article 42 and 43 of the ICSID Arbitration (Additional Facility) Rules

- 18.1. 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.
- 18.2. 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. Upon a reasoned request and following consideration of any observations by the other party, examination of a witness or expert by video-conference may be permitted at the discretion of the Tribunal.
- 18.3. The parties shall notify the opposing party which witnesses 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.
- 18.4. 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 hearing.
- 18.5. 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.
- 18.6. 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.
- 18.7. The presence of fact and expert witnesses in the hearing room prior to giving their oral evidence shall be discussed between the parties prior to the pre-hearing organizational meeting to be held pursuant to §19.1 below and, if required, decided by the Tribunal at that meeting.

19. Hearing (including Pre-Hearing Organizational Meetings)
Articles 21(2) and 29 of the ICSID Arbitration (Additional Facility) Rules
- 19.1. At the discretion of the Tribunal after consultation with the parties, a pre-hearing conference call may be convened in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
- 19.2. The hearing (Jurisdiction, if necessary, and Merits) shall be held at a place to be determined in accordance with § 10 above.
- 19.3. 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.
- 19.4. The hearings (Jurisdictional, if necessary, and Merits) shall take place at a date to be determined by the Tribunal upon consultation with the parties consistent with Annex A.
- 19.5. 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.
- 19.6. The principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings. Each party shall be permitted to use the time allocated to it as it sees fit.
- 19.7. All other matters regarding hearings shall be agreed upon by the disputing parties or decided by the Tribunal at a later stage.
20. Records of Hearings and Sessions
Article 28(1)(g) of the ICSID Arbitration (Additional Facility) Rules
- 20.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 20.2. Verbatim transcripts in the procedural languages shall be made of any hearing 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.
- 20.3. 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 and/or 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.

21. Post-Hearing Memorials and Statements of Costs

Article 58(1) of the ICSID Arbitration (Additional Facility) Rules

21.1. The Tribunal shall decide at the hearing, after hearing the Parties, whether, by when and under what conditions any post-hearing briefs may be required, and when cost submissions are to be made.

22. Transparency, Non-Disputing Party Submissions and Publication

Administrative and Financial Regulation 22, Articles 41(3) and 53(3) of the ICSID Arbitration (Additional Facility) Rules; Article 1128 of the NAFTA; -FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents; FTC Statement on Non-Disputing Party Participation dated 7 October 2003

22.1. The parties consent to ICSID publication of the award, the Notice of Intent to Arbitrate, the Notice of Arbitration, the parties' memorials, and any other procedural order or interim decision issued in the present proceeding subject to the conditions and procedures of any confidentiality order that the Tribunal may issue in consultation with the parties.

22.2. Section I (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued July 31, 2001, applies to the treatment of documents in these proceedings.

22.3. The Governments of Canada and the United States of America may make submissions to the Tribunal pursuant to the procedure and requirements set forth in NAFTA Article 1128 and in accordance with the Procedural Timetable in Annex A.

22.4. Any non-disputing party, other than a NAFTA Party referred to in Article 1128 of the NAFTA, that wishes to file a written statement to the Tribunal shall apply for leave from the Tribunal to file such a submission in accordance with the Procedural Timetable in Annex A. The Tribunal shall consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on non-disputing party participation, issued on October 7, 2003. As recognized therein, the disputing parties shall have the right to respond to all applications and submissions by non-disputing parties.



Dr. Gaëtan Verhoosel
President of the Tribunal
Date: April 4, 2017

Annex A

Procedural Timetable for the Jurisdictional Phase

Submission	Party	Term	Due Date
Memorial on Jurisdictional Objections	Respondent	[8] weeks from the date of Procedural Order No. 1	May 30, 2017
Counter-Memorial on Jurisdictional Objections	Claimants	[8] weeks from the due date of Memorial on Jurisdiction	July 25, 2017
Requests for Production of Documents	Claimants and Respondent	[3] weeks from the due date of Counter-Memorial on Jurisdictional Objections	August 15, 2017
Production of non-objected documents and Objections to Requests for Production of Documents (if any)	Claimants and Respondent	[3] weeks from the due date of Requests for Production of Documents	September 5, 2017
Reply to Objections to Requests for Production	Claimants and Respondent	[2] weeks from the due date of Production of non-objected documents and Objections to Requests for Production of Documents	September 19, 2017
Decision on Requests for Production of Documents	Tribunal	[3] weeks from the due date of Reply to Objections to Requests for Production	October, 10 2017
Simultaneous Production of Documents Ordered by the Tribunal	Claimants and Respondent	[3] weeks from the due date of Decision on Requests for Production of Documents	October 31, 2017
Reply on Jurisdictional Objections	Respondent	[4] weeks from the Production of Documents Ordered by the Tribunal	November 28, 2017

Rejoinder on Jurisdictional Objections	Claimants	[5] weeks from the due date of the Reply on Jurisdiction	January 2, 2018
1128 Submissions	Non-disputing NAFTA Parties	[2] weeks from the due date of the Rejoinder on Jurisdiction	January 16, 2018
Comments to 1128 Submissions	Claimants and Respondent	[2] weeks from the due date of the 1128 Submissions	January 30, 2018
Witness Notifications (if necessary)	Claimants and Respondent	[4] weeks from the due date of comments on 1128 Submissions	February 27, 2018
Pre-Hearing Organizational Meeting (if necessary)	All	[3] weeks from the due date of Witness Notifications	March 20, 2018
Hearing on Jurisdictional Objections (if necessary)	All	[At least 8] weeks from the date of the Pre-Hearing Organizational Meeting	May 14-18, 2018 [or] May 21-25, 2018
Tribunal's Decision		To be determined	TBD

Annex B

Template Redfern Schedule for Production of Documents

No.	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response/ Objections (if any)	Reply to Response/ Objections (if any)	Tribunal's Decision