

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**

- and -

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

- between -

Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos Williamson-Nasi in his own right and on behalf of Axis Services, Axis Holding, Clue and F. 305952; Carolyn Grace Baring; Diana Grace Beard; Floradale Partners, LLC; Frederick Grace; Frederick J. Warren; Frederick J. Warren IRA; Gary Olson; Genevieve T. Irwin; Genevieve T. Irwin 2002 Trust; Gerald L. Parsky; Gerald L. Parsky IRA; John N. Irwin III; José Antonio Cañedo-White in his own right and on behalf of Axis Services, Axis Holding and F. 305952; Nicholas Grace; Oliver Grace III; ON5 Investments, LLC; Rainbow Fund, L.P.; Robert M. Witt; Robert M. Witt IRA; Vista Pros, LLC; Virginia Grace

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/18/4

PROCEDURAL ORDER No. 1

Tribunal

Prof. Diego P. Fernández Arroyo (Presiding Arbitrator)
Mr. Andrés Jana Linetzky
Mr. Gabriel Bottini

Secretary of the Tribunal
Ms. Celeste E. Salinas Quero

March 25, 2019

Table of Contents

1.	Commencement of Arbitration	4
2.	Applicable Arbitration Rules	4
3.	Constitution of the Tribunal and Tribunal Members' Declarations.....	4
4.	Administrative Authority and Secretary of the Tribunal	5
5.	Fees and Expenses of Tribunal Members	6
6.	Deposits and Apportionment of costs	7
7.	Presence and Quorum	7
8.	Decisions and Procedural Rulings of the Tribunal	7
9.	Power to Fix Time Limits	8
10.	Representation of the Parties	8
11.	Place of Arbitration.....	9
12.	Procedural Language(s), Translation and Interpretation	9
13.	Routing of Communications	11
14.	Written and Oral Procedures.....	11
15.	Number of Copies and Method of Filing of Main Pleadings.....	12
16.	IBA Rules as Guidelines for Rulings on Evidence.....	13
17.	Production of Documents	13
18.	Documentary Evidence.....	15
19.	Witness Statements and Expert Reports	16
20.	Examination of Witnesses and Experts.....	17
21.	Pre-Hearing Organizational Meetings	18
22.	Hearing.....	18
23.	Records of Hearings and Sessions	18
24.	Post-Hearing Submissions and Statements of Costs.....	19
25.	Transparency, Confidentiality and Publication.....	19
26.	Immunity of the Tribunal.....	20
27.	Confidentiality Order	20

Introduction

The first session of the Tribunal was held on 12 March 2019 by telephone conference.

Participating in the conference call were:

Members of the Tribunal:

Diego P. Fernández Arroyo, Presiding Arbitrator

Andrés Jana Linetzky, Arbitrator

Gabriel Bottini, Arbitrator

ICSID Secretariat:

Marisa Planells-Valero

Participating on behalf of the Claimants:

Juan M. Morillo, Quinn Emanuel Urquhart & Sullivan, LLP

David M. Orta, Quinn Emanuel Urquhart & Sullivan, LLP

Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan, LLP

Dawn Y. Yamane Hewett, Quinn Emanuel Urquhart & Sullivan, LLP

Daniel Pulecio-Boek, Quinn Emanuel Urquhart & Sullivan, LLP

Participating on behalf of the Respondent:

Orlando Pérez Gárate, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Hugo Gabriel Romero Martínez, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Alan Bonfiglio Ríos, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Cameron Mowatt, Tereposky & De Rose, LLP

Alejandro Barragán, Tereposky & De Rose, LLP

Stephan Becker, Pillsbury Winthrop Shaw Pittman LLP

The Tribunal and the parties considered the following:

- The draft Procedural Order No. 1 circulated by the Secretary of the Tribunal on 14 February 2019.
- The parties' communications of 5 March 2019, indicating the procedural matters on which they agreed and their respective positions regarding the items on which they did not agree.
- The Claimants' communication of March 20, 2019, with the parties' agreement on Transparency, Confidentiality and Publication, incorporated in § 25 below.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the parties.

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

Order:

1. Commencement of Arbitration

- 1.1. By Notice of Arbitration dated 19 June 2018, the Claimants commenced arbitration proceedings against the Respondent pursuant to Articles 1116(1), 1117(1) and 1120(1)(c) of the North American Free Trade Agreement (“NAFTA”) and the Arbitration Rules of the United Nations Commission on International Trade Law adopted by the UN General Assembly on 15 December 1976 (the “UNCITRAL Rules”).
- 1.2. In accordance with the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on 19 June 2018, the date on which the Respondent received the Notice of Arbitration.

2. Applicable Arbitration Rules

Article 1120 and 1139 of the NAFTA

- 2.1. These proceedings are conducted in accordance with the UNCITRAL Rules, except to the extent that they are modified by Section B, Chapter 11 of NAFTA.

3. Constitution of the Tribunal and Tribunal Members’ Declarations

Articles 7 and 9 of the UNCITRAL Rules

- 3.1. On 24 July 2018, the Claimants appointed Mr. Andrés Jana Linetzky as the first arbitrator. His contact details are as follows:

Mr. Andrés Jana Linetzky

Bofill Mir & Alvarez Jana
Av. Andrés Bello 2711, Piso 8
7550611 Las Condes, Santiago de Chile
Chile
+ 56 2 2757 7616
ajana@bmaj.cl

- 3.2. On 17 September 2018, the Respondent appointed Mr. Gabriel Bottini as the second arbitrator. His contact details are as follows:

Mr. Gabriel Bottini

Suero de Quiñones, 42
28002, Madrid
Spain

+ 34 915870929
gabriel.bottini@uria.com

- 3.3. On 25 January 2019, the Secretary-General of ICSID appointed Prof. Diego P. Fernández Arroyo as presiding arbitrator. His contact details are as follows:

Presently and until 6 July 2019:

Prof. Diego P. Fernández Arroyo
Arenales 1384. Dpto. 12 D
1061, Ciudad de Buenos Aires
Argentina
+ 54 9 11 3481 2301

From 7 July 2019 onwards:

Prof. Diego P. Fernández Arroyo
4 rue Rollin
75005, Paris
France
+33(0)6 6208 7047
diego.fernandezarroyo@dpfa-arb.com

- 3.4. The parties confirmed that the members of the Tribunal have been duly and validly appointed and the Tribunal has been duly and validly constituted in accordance with the NAFTA and the UNCITRAL Rules.
- 3.5. The members of the Tribunal confirmed that they are and shall remain impartial and independent of the parties. Each of the members of the Tribunal confirmed that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
- 3.6. The members of the Tribunal confirmed that they have sufficient availability during the next 36 months to dedicate to this case.
- 3.7. The parties confirmed that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them.
4. Administrative Authority and Secretary of the Tribunal
ICSID Administrative and Financial Regulation 25
- 4.1. On 12 September 2018, the parties confirmed their agreement to the designation of the International Centre for Settlement of Investment Disputes (ICSID) as the

Administering Authority. On 13 September 2018, ICSID accepted the appointment as Administering Authority.

- 4.2. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID's services shall be included in the costs of the arbitration.
- 4.3. The Tribunal Secretary is Ms. Celeste E. Salinas Quero, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 4.4. Copies of communications by email, mail, and courier/parcel shall be sent to:

Ms. Celeste E. Salinas Quero
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-7461
Fax: + 1 (202) 522-2615
Email: csalinasquero@worldbank.org
Paralegal email: jargueta@worldbank.org

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

Ms. Celeste E. Salinas Quero
1225 Connecticut Ave., N.W. (World Bank Group, C Building)
3rd Floor
Washington, D.C. 20036
+ 1 (202) 458-7461

5. Fees and Expenses of Tribunal Members

Article 39 UNCITRAL Rules; ICSID Schedule of Fees; Regulation 14 of the ICSID Administrative and Financial Regulations

- 5.1. 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.
- 5.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 5.2.1. 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

- 5.2.2. Subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 5.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 5.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
6. Deposits and Apportionment of costs
Article 41 UNCITRAL Rules; ICSID Administrative and Financial Regulation 14
- 6.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs, pursuant to Article 40 of the UNCITRAL Rules.
- 6.2. By letter of 30 January 2019, ICSID requested that each party pay a deposit of US\$ 150,000 to defray the initial costs of the proceeding. ICSID received Claimants' payment on 1 March 2019. By the date of the issuance of this order, Respondent's share of the deposit had not been received.¹
- 6.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account.
- 6.4. After the award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
7. Presence and Quorum
- 7.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
8. Decisions and Procedural Rulings of the Tribunal
Article 31 of the UNCITRAL Rules
- 8.1. All awards and decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

¹ On 1 March 2019, Respondent submitted a letter informing that it was undertaking the steps necessary to comply with the payment of the deposit.

- 8.2. The Tribunal may take decisions by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal. If 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.
- 8.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 8.4. The Tribunal's rulings on procedural matters shall be communicated to the parties and may be informed by the Tribunal Secretary in the form of a letter or email. The Tribunal, before issuing a decision on procedural matters, shall consult the disputing parties, save for circumstances when the Tribunal deems it necessary to issue a ruling without consulting both parties.

9. Power to Fix Time Limits
Article 23 of the UNCITRAL Rules

- 9.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 9.2. 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.

10. Representation of the Parties

- 10.1. 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

Quinn Emanuel Urquhart & Sullivan,
 LLP

Juan P. Morillo
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 1300 I Street NW, Suite 900
 Washington, DC 20005
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For Respondent

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11. Place of Arbitration

Article 16 of the UNCITRAL Rules; Article 1130 of the NAFTA

- 11.1. Toronto, Canada, shall be the place of arbitration.
- 11.2. Hearings shall be held at ICSID’s headquarters in Washington, D.C.
- 11.3. The Tribunal may deliberate at any place or by any means it considers appropriate.
- 11.4. All awards shall be deemed to be made at the place of the arbitration, regardless of where the award is signed.

12. Procedural Language(s), Translation and Interpretation

Article 17 of the UNCITRAL Rules

- 12.1. Spanish and English are the procedural languages of the arbitration, subject to the following provisions.

For the parties' requests, pleadings and oral presentations

- 12.2. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation from the parties, including request for documents exchanged between the parties, shall be in either procedural language. The Tribunal may require that a party translate any document in whole or in part, in which case it shall set an appropriate deadline for the filing of the translation.
- 12.3. Any document written in a language other than Spanish or English must be translated into Spanish or English.
- 12.4. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal decides to request a certified translation. It shall not be improper for counsel to provide their own translations, provided that such circumstance is indicated.
- 12.5. For ease of reference, the parties shall paginate any translation in the same way as the original document, placing the translation first in the electronic version.
- 12.6. Oral presentations by the parties may be made in either Spanish or English. Each party is free to select which of the two procedural languages it will use in the oral proceeding and in any other meeting or conference call with the Tribunal. At any time, a party has the right to switch from one procedural language to the other.

For the hearing

- 12.7. The hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 12.8. The testimony of a witness called for examination during the hearing who prefers to give evidence in a language other than Spanish or English shall be interpreted simultaneously.
- 12.9. The parties shall 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 interpretation services.
- 12.10. 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 the Tribunal's Decisions and Awards

- 12.11. Orders and decisions shall be issued in either procedural language, with an equally authentic version in the other procedural language following shortly thereafter.
- 12.12. The Tribunal shall render any award in Spanish and English simultaneously. Both language versions shall be equally authentic.

For the Secretariat's correspondence

- 12.13. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in either English or Spanish.

13. Routing of Communications

Article 15(3) of the UNCITRAL Rules

- 13.1. Written communications in the case shall be transmitted by email to the parties, the Tribunal Secretary, and the Tribunal. If such communications contain attachments, they shall be text searchable (i.e., OCR PDF or Word document).
- 13.2. Written communications ordered by the Tribunal to be filed simultaneously shall be transmitted by email to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal after both parties' submissions have been received.
- 13.3. 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.
- 13.4. The parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

14. Written and Oral Procedures

Articles 15(2), 18, 19 and 22 of the UNCITRAL Rules

- 14.1. The proceeding shall consist of a written phase followed by an oral phase.
- 14.2. The written procedure will comprise two rounds of pleadings per side, per phase (in the event the arbitration is bifurcated) to be filed on the dates established in the Procedural Timetable of **Annex A**, except if the Tribunal, at the reasonable request of any party or on its own initiative, decides that for good cause this Procedural Timetable has to be amended.

15. Number of Copies and Method of Filing of Main Pleadings

- 15.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary, the opposing party and the Members of the Tribunal an electronic version of the pleading with witness statements, expert reports, and consolidated indices of exhibits (without the supporting exhibits and without legal authorities) (“electronic filing”).²
- 15.2. Within 3 business days of the electronic filing, the parties shall upload to the file sharing platform created by ICSID the materials filed in the electronic filing under § 16. 1 as well as the supporting exhibits and legal authorities.
- 15.3. The filing process indicated under §15.1 and §15.2 shall apply to both the original language submission and to any subsequent translations submitted pursuant to §12.2 and §12.3.
- 15.4. Within 3 business days following the electronic filing of the translations submitted pursuant to §12.2, the parties shall courier to the Tribunal Secretary:
- 15.4.1. One unbound hard copy in A4 or Letter format³ of the entire submission⁴ (both in the original language and the subsequent translations), including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities) and the consolidated indices.
- 15.4.2. One USB drive with full copies of the entire submission (both in the original language and the subsequent translations), including the pleading, the witness statements, expert reports, exhibits, legal authorities and consolidated indices.
- 15.5. Within 5 business days following the electronic filing of the Rejoinder, the parties shall courier to each Member of the Tribunal (at the addresses indicated at § 3.1 to § 3.3 above):
- 15.5.1. One USB drive with full copies of the Statement of Claim, Statement of Defense, Reply and Rejoinder (both in the original language and the subsequent translations), including the witness statements, expert reports, exhibits, legal authorities and consolidated indices.
- 15.6. The Tribunal may request the parties to produce a hard copy of any document filed electronically.
- 15.7. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

² Please note that the World Bank server does not accept emails larger than 25 MB.

³ The A4/Letter format is required for ICSID’s archiving.

⁴ The Secretariat’s copy will be kept in ICSID’s repository and is not intended to be used at the hearing.

The electronic versions of the pleadings, the witness statements and expert reports shall allow electronic copy and paste of the text.

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. IBA Rules as Guidelines for Rulings on Evidence

16.1. For matters concerning the gathering or taking of evidence that are not otherwise covered by a procedural order issued by the Tribunal, the UNCITRAL Rules or NAFTA Chapter 11, the Tribunal may refer to the *IBA Rules on the Taking of Evidence in International Arbitration* (2010) (the “IBA Rules”) for guidance as to the practices commonly accepted in international arbitration, but it shall not be bound to apply them.

17. Production of Documents

17.1. Each party may request the production of a reasonable number of documents from the other party in accordance with the procedural calendar in **Annex A**. Requests for the production of documents shall be submitted in writing, and set forth reasons for the request in respect of each document or class of documents requested. Any request for the production of document shall comply with the requirements set forth in Article 3(3) of the IBA Rules.

17.2. Unless the requested party objects to production, it shall produce the requested documents within the time limit set forth in **Annex A**. If a party objects to only a certain aspect of a request, that party shall produce the documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural calendar.

17.3. To the extent that a party considers that a requested document or category of documents is not subject to production, the following procedure shall apply:

17.3.1. The party that has received a request for documents shall submit by email its objections to the requesting party, by the date specified in **Annex A**.

17.3.2. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.

- 17.3.3. The requesting party shall reply to the objections to produce by the date specified in **Annex A**. The requesting party shall respond to the other party's objection, indicating, with reasons, whether it disputes the objection.
 - 17.3.4. The Parties shall seek agreement on production requests to the greatest extent possible.
 - 17.3.5. To the extent that agreement cannot be reached between the requesting and the requested party, the parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
 - 17.3.6. Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex C** (alternative Redfern schedule). The parties shall use the model format throughout their exchange of requests, objections, and responses.
 - 17.3.7. The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
 - 17.3.8. Should a party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 17.4. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.
 - 17.5. The producing party shall provide the requesting party with a complete and accurate list of the documents that are being produced, at the time of production. Said list shall contain the name of the corresponding electronic file and a brief description of the document. Any error in the list shall be corrected by the producing party as soon as possible.
 - 17.6. The requested documents and the list of documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. The producing party shall also deliver a USB drive, or a CD- ROM, with a complete set of the documents and the list to the requesting party within 3 business days of the corresponding due date.
 - 17.7. Documents produced in response to a request for documents will not be part of the

record, unless they are included as exhibits to a written submission or as an annex to a witness statement or expert report.

17.8. Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

18. Documentary Evidence
Article 24 of the UNCITRAL Rules

18.1. Written pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.

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 or testimony or expert reports after the filing of its respective last written submission, except in exceptional circumstances with leave from the Tribunal, to be granted upon a showing of good cause.

18.3.1. Should a party request leave to file additional or responsive documents, testimony or expert reports, that party shall not annex the documents that it seeks to file to its request.

18.3.2. If the Tribunal grants such an application and admits the document into evidence, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning the new document, testimony or expert report.

18.4. The Tribunal may call upon the parties to produce documents or other evidence if it deems it necessary, in accordance with Article 24(3) of the UNCITRAL 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 the Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.

18.5.3. Each Exhibit shall have a cover page or divider with the exhibit identification number.

18.5.4. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively, followed by the date of the document in yyyy-mm-dd format, followed by a short title that describes the document (for example “C-0001 2017-07-31 Power of Attorney.pdf”). The numbering shall also indicate the language of the document (for example, C-0001 2017-07-31 Power of Attorney-ENG.pdf for a document submitted only in English, C-0001 2017-07-31 Power of Attorney-SPA.pdf for a document submitted only in Spanish and C-0001 2017-07-31 Power of Attorney ENG/SPA.pdf for a document submitted simultaneously in English and Spanish. Each exhibit shall be placed in a separate PDF file.

18.5.5. Electronic filings shall follow the naming conventions contained in **Annex B**.

18.6. 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.

18.7. 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.

18.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at the 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 exhibit(s) from which it is derived. Each party shall share a copy of demonstrative exhibits pertaining to a specific hearing presentation with the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and the interpreter(s) at a time of its choosing, but no later than immediately before the specific hearing presentation for which the demonstrative exhibits were prepared.

19. Witness Statements and Expert Reports
Articles 25 and 27 of the UNCITRAL Rules

19.1. Witness statements, expert reports and their supporting documentation shall be filed as exhibits to the pleadings.

19.2. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs, and include all the information required under Articles 4(5) and 5(2), respectively, of the IBA Rules.

19.3. All witness statements and expert reports shall be signed and dated by the witness or expert.

20. Examination of Witnesses and Experts

Articles 24(3), 25 and 27 of the UNCITRAL Rules

20.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any witness or expert whose written testimony has been submitted with the Pleadings.

20.2. Subject to the Tribunal's approval, each party may call to testify any of its own witnesses or experts. Any witness or expert called for direct examination may be cross-examined by the other party. In this case, the Tribunal shall decide upon the scope of the examination by each party.

20.3. 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.

20.4. The failure to cross-examine a witness or an expert or the partial cross-examination of a witness or an expert shall not imply an acceptance of the content of the corresponding witness statement or expert report. Each party remains free to challenge the content of the witness statement or expert report by all available means of evidence and the Tribunal remains free to assess the probative value of the witness statement or expert report in its discretion.

20.5. Each party shall notify the opposing party which witnesses and experts it intends to call for cross-examination within 4 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 examine, if any.

20.6. 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. Witness and experts shall make a declaration of truthfulness.

20.7. 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. At the request of such party, the Tribunal may authorize an expert to make a short oral presentation.

20.8. Subject to the discretion of and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in

his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion. Re-direct examination shall be limited to the subject of cross-examination.

20.9. Witnesses shall be allowed in the hearing room after having given their oral evidence. Experts shall be allowed in the hearing room at any time.

21. Pre-Hearing Organizational Meetings

21.1. A pre-hearing organizational meeting to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing shall be held at a date determined by the Tribunal after consultation with the parties. The pre-hearing organizational meeting shall take place within 3 weeks from the date of witness notifications by the parties and at least 6 weeks before the hearing.

22. Hearing

Article 25 of the UNCITRAL Rules

22.1. The hearing shall be held at ICSID's headquarters in Washington, D.C.

22.2. The hearing shall take place on the date indicated in **Annex A**.

22.3. 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.

22.4. 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.

22.5. Hearings shall be closed to the public.

23. Records of Hearings and Sessions

Article 25(3) of the UNCITRAL Rules

23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Members of the Tribunal.

23.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session including 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 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
24. Post-Hearing Submissions and Statements of Costs
Article 38 of the UNCITRAL Rules
- 24.1. The Tribunal shall decide at the hearing, after consulting with the parties, whether any post-hearing briefs shall be filed, and if so, their length, formal content and the date for the filing. No new evidence may be submitted together with the post-hearing brief.
- 24.2. At the conclusion of the hearing, after consulting with the parties, the Tribunal shall determine the date when the cost submissions are to be filed.
25. Transparency, Confidentiality and Publication
NAFTA Article 1137(4), and FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents, Article 32.5 of the UNCITRAL Rules
- 25.1. Section A (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued on July 31, 2001 (“Notes”), shall apply to the treatment of documents in these proceeding, except as modified in this or any other Procedural Order issued by this Tribunal.
- 25.2. Subject to the appropriate conditions, deadlines and procedures for the protection of confidential information that shall be established in a subsequent procedural order by the Tribunal in consultation with the parties (“Confidentiality Order”), the parties consent that the ICSID Secretariat publishes on ICSID’s website, including the right of any party to publish at its own website, the following documents:
- 25.2.1. Any orders, decisions, interim or partial awards, as well as the final award, issued by the Tribunal; and
- 25.2.2. The following pleadings (but not the supporting witness statements, expert reports, exhibits or legal authorities): (i) Claimants’ notice of arbitration, including the notice of intent; (ii) Claimants’ statement of claim; (iii) Respondent’s statement of defence; (iv) Claimants’ reply; Respondent’s rejoinder.
- 25.2.3. Any written submissions by other NAFTA Parties.

25.3. The documents identified in §25.2.2 shall only be published by the ICSID Secretariat after the opposing party has submitted before the Tribunal its response to the corresponding pleading. Therefore:

25.3.1. Claimants' Statement of Claim shall only be published together with Respondent's Statement of Defence;

25.3.2. Claimants' Reply shall only be published together with Respondent's Rejoinder.

25.4. The written submissions by other NAFTA Parties and the written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal shall be published on the dates determined by the Tribunal.

25.5. Supporting witness statements, expert reports, exhibits or legal authorities submitted with any pleading may not be disclosed to any third party. To the extent any Party refers to or provides in a submission evidence covered by or subject to non-disclosure agreements (or similar agreements preventing disclosure or protecting confidentiality) or confidentiality orders entered by other courts (for example, protective orders), the Tribunal and the Parties will be subject to and must comply with the provisions of any such non-disclosure agreements or confidentiality orders.

26. Immunity of the Tribunal

26.1. The parties agreed that no member of the Tribunal shall be liable to any party howsoever for any act or omission in connection with this arbitration, save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the member of the Tribunal alleged to be liable to that party; or (ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

26.2. The parties agreed that no member of the Tribunal shall be under any legal obligation to make any statement to any party or any person about any matter concerning the arbitration; nor shall any party seek to make any member of the Tribunal a witness or participant in any legal or other proceedings arising out of or in connection with the arbitration.

27. Confidentiality Order

27.1. On March 20, 2019, the Claimants submitted the parties' agreement on Transparency, Confidentiality, and Publication, incorporated in § 25 above. The Claimants also informed that the parties had agreed to submit short simultaneous

letter briefs on the issue of amicus curiae briefs by March 27, 2019.

- 27.2. After receiving the parties' briefs, the Tribunal shall issue an order on non-disputing party and amicus curiae participation.

On behalf of the Tribunal

[Signed]

Prof. Diego P. Fernández Arroyo
Presiding Arbitrator
Date: March 25, 2019

ANNEX A

Procedural Timetable

Pleading	Time limit	Due Date
Statement of Claim (Claimants)	20 weeks from the issuance of PO 1	Monday, August 12, 2019
Statement of Defense (Respondent)	20 weeks from the due date of the Statement of Claim	Monday, December 30, 2019
Requests for Production of Documents (Claimants and Respondent)	4 weeks from the due date of the Statement of Defense	Monday, January 27, 2020
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 the Requests for Production of Documents	Monday, February 17, 2020
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	Monday, March 2, 2020
Decision on Requests for Production of Documents (Tribunal)	3 weeks from the due date of Reply to Objections to Requests for Production	Monday, March 23, 2020
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	Monday, April 13, 2020

Pleading	Time limit	Due Date
Reply (Claimants)	10 weeks from the production of documents ordered by the Tribunal	Monday, June 22, 2020
Rejoinder (Respondent)	10 weeks from the submission of the Reply	Monday, August 31, 2020
1128 Submissions (Non-disputing NAFTA parties)	2 weeks from the submission of the Rejoinder	Monday, September 14, 2020
Comments to 1128 Submissions (Claimants and Respondent)	2 weeks from the submission of the 1128 Submission	Monday, September 28, 2020
Witness Notifications (Claimants and Respondent)	4 weeks from the due date of the Comments to 1128 Submissions	Monday, October 26, 2020
Pre-Hearing Organizational Meeting (if necessary) (Tribunal, Claimants, Respondent)	Within 3 weeks from the due date of Witness Notifications	
Hearing on the Merits (Tribunal, Claimants, Respondent)	At least 6 weeks from the date of the Pre-Hearing Organizational Meeting	
Tribunal's Decision	TBD	

ANNEX B

Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case. For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-SPA or ENG</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA or ENG</i>
	<i>Reply on Annulment-SPA or ENG</i>
	<i>Rejoinder on Quantum-SPA or ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####-[DATE] - LANGUAGE
	R-####-[DATE] - LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001- [DATE] – ENG</i>
	<i>C-0002- [DATE] – SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-[DATE] – ENG</i> <i>R-0002-[DATE] – SPA</i>
Legal Authorities	CL-####- [DATE] -LANGUAGE
	RL-####- [DATE] - LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-[DATE] – ENG</i>
	<i>CL-0002- [DATE] – SPA</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-[DATE] – SPA</i> <i>RL-0002-[DATE] – ENG</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>

Expert Reports	<i>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</i>
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<i>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</i>
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-SPA</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-SPA</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-#### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-SPA</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

ANNEX C

Redfern Schedule

Request No.	1
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	

Request No.	2
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	