

**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**

*Claimants*

**v.**

**The United Mexican States**

*Respondent*

---

**PROCEDURAL ORDER NO. 15**

**ON THE RESPONDENT'S REQUEST FOR AN EXTENSION OF THE DEADLINE FOR  
THE FILING OF ARTICLE 1128 SUBMISSIONS**

---

*Tribunal*

Prof. Diego P. Fernández Arroyo, President

Mr. Andrés Jana Linetzky, Arbitrator

Mr. Gabriel Bottini, Arbitrator

*Secretary of the Tribunal*

Ms. Patricia Rodríguez Martín

August 4, 2021

## **I. Procedural Background**

1. On 21 June 2021, the Tribunal issued Procedural Order No. 14, which modified the procedural calendar to accommodate for the Respondent's request for an extension of the deadline for the filing of the Rejoinder Memorial. Procedural Order No. 14 also modified the dates for the filing of the non-disputing party submissions under Article 1128 of the North American Free Trade Agreement (the "1128 Submissions") and the Comments thereon, which were made on 24 August and 7 September respectively.
2. On 9 July 2021, on instruction of the Tribunal, the Secretary of the Tribunal informed the Governments of the United States of America and of Canada of the dates for the filing of the 1128 Submissions.
3. On 23 July 2021, the Respondent sent a communication to the Tribunal requesting an extension of the deadline for the filing of the 1128 Submissions. In particular, the Respondent requested that the six-week period between the last written submission and the 1128 Submission as established in Procedural Order No. 14 should start running from the moment ICSID publishes the public versions of the Reply and Rejoinder Memorials.
4. On 24 July 2021, the Tribunal invited the Claimants to comment on the Respondent's request.
5. On 30 July 2021, the Claimants sent a letter to the Tribunal, objecting to the Respondent's request for an extension.

## **II. The Tribunal's Analysis**

6. The Respondent argues that the deadlines established in the procedural calendar prevent the NAFTA non-disputing parties from having access to the public versions of the Rejoinder and Rejoinder Memorials before the date for the submission of the 1128 Submissions. The Respondent considers that the 6-week period for the filing of 1128 Submissions should commence from the date ICSID publishes the public versions of the Reply and Rejoinder Memorials. The Respondent also emphasizes that a modification of the procedural calendar for the filing of the 1128 Submissions would not cause any difficulties since the hearing will take place in April 2022.
7. As a matter of principle, the Arbitral Tribunal is always willing to reconsider the procedural calendar whenever circumstances arise that may unduly alter the balance between the Parties, with regard to their right to present their case. However, it is evident that in the request that is currently being considered for this Procedural Order, the Respondent's concern focuses exclusively on the NAFTA non-disputing parties' filing of 1128 Submissions. Consequently, the Respondent's right to present its case is not at stake. The issue at stake is, in essence, whether the Respondent can submit this request on behalf of the non-disputing parties.
8. The Arbitral Tribunal notes that Article 1128 establishes that NAFTA non-disputing parties may file submissions on a "question of interpretation" of NAFTA. In this regard, the Respondent has not put forward any basis to suggest that access by the NAFTA non-disputing

parties to the public version of the Rejoinder and Rejoinder Memorials is necessary for them to exercise their right to file submissions on a “question of interpretation” of NAFTA. It is clear that the right reserved by the NAFTA parties in Article 1128 is not meant for commenting on the Parties’ submissions.

9. In any event, the Arbitral Tribunal notes that the Respondent’s request refers to “rights granted” to NAFTA non-disputing parties. In this sense, the Arbitral Tribunal agrees with the Claimants that the NAFTA non-disputing parties are at liberty to submit a request for an extension if they find it necessary. However, this has not occurred to date.

### **III. Order**

10. Consequently, the Tribunal rejects the Respondent’s request, and maintains the procedural calendar established in Procedural Order No. 14.

On behalf of the Tribunal,

[Signed]

---

Professor Diego P. Fernández Arroyo  
President of the Tribunal  
Date: August 4, 2021  
Seat of the arbitration: Toronto, Canada