

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Espíritu Santo Holdings, LP
Claimant**

v.

**United Mexican States
Respondent**

(ICSID Case No. ARB/20/13)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

March 29, 2021

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Introduction

The first session of the Tribunal was held on March 11, 2021, at 11:30 a.m. EST, by videoconference. The session was adjourned at 12:40 p.m. EST.

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.

Participating in the conference were:

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

ICSID Secretariat:

Mr. Francisco Abriani, Secretary of the Tribunal

Attending on behalf of the Claimant:

Richard C. Lorenzo, Hogan Lovells US LLP

Mark R. Cheskin, Hogan Lovells US LLP

Michael G. Jacobson, Hogan Lovells US LLP

Juliana de Valdenebro Garrido, Hogan Lovells US LLP

Tai-Heng Cheng, Sidley Austin LLP

Simon Navarro, Sidley Austin LLP

Jennifer Lim, Sidley Austin LLP

Eugenia Seoane, Sidley Austin LLP

Meera Rajah, Sidley Austin LLP

Attending on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Secretaría de Economía.

Ms. Cindy Rayo Zapata, Secretaría de Economía.

Mr. Geovanni Hernández Salvador, Secretaría de Economía.

Mr. Marcos Fernando Carrasco Soulé López, Secretaría de Economía.

Mr. Miguel Ángel Galindo Vega, Secretaría de Economía.

Mr. Francisco Javier Molina Escamilla, Secretaría de Economía.

Ms. Imelda Aime Anaid Silva Pacheco, Secretaría de Economía.

Mr. Jorge Luis Andres José, Secretaría de Economía.

Stephan E. Becker

Pillsbury Winthrop Shaw Pittman LLP

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The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on February 22, 2021; and
- The parties' comments on the Draft Procedural Order received on March 10, 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex B.

1. Applicable Arbitration Rules

Convention Article 44; Articles 1120(2) and 1131 of the NAFTA

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration 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

Arbitration Rule 6

- 2.1. The Tribunal was constituted on January 27, 2021 in accordance with Article 1123 of NAFTA, the ICSID Convention and the ICSID Arbitration 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 ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on January 27, 2021.
- 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 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.

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3. Fees and Expenses of Tribunal Members
Convention Article 60; 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
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) 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 Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.

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- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

- 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 Abriani, 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:

Mr. Francisco Abriani
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
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Tel.: + 1 (202) 473-0274
Fax: + 1 (202) 522-2615
Email: fabriani@worldbank.org
Paralegal name: Vanina Laura Bauza
Paralegal email: vbauza1@worldbank.org

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

Mr. Francisco Abriani
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

- 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 Claimant

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Mr. Marcos Fernando Carrasco Soulé
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9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 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 January 28, 2021, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. On March 5, 2021, the Claimant was granted an extension until March 22, 2021, to make the requested payment. ICSID received the Respondent's payment on March 4, 2021.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. 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.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); NAFTA Article 1130
- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings in-person at any other place that it considers appropriate, if the parties so agree, or hearings by any other means of communication as determined by the Tribunal after consultation with the parties.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means it considers convenient.
- 10.4. The Award shall be deemed to be made at the place of the arbitration, regardless of where it is signed.
11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 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. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either procedural language. However, within 25 days following the corresponding submission, the party shall submit a courtesy translation of the pleadings, witness statements and expert opinions. This will not be applicable to annexes or appendices derived from witness statements and expert opinion unless the tribunal require that a party translate specific documentation in whole or in part.
- 11.4. In addition, the Tribunal may require that a party translate any document in whole or in part when it is submitted in a language other than those used in the arbitration proceedings.
- 11.5. 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.
- 11.6. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.

For Hearing

- 11.7. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language.
- 11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish languages shall be interpreted, simultaneously if possible.
- 11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.10. 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 Tribunal's Documents Except the Award

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

For Tribunal's Award

11.12. The Tribunal shall render the award in English and Spanish simultaneously. Both language versions shall be equally authentic.

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, pleadings or filings 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 after both parties' submissions have been received.

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.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the parties shall:

13.1.1. submit by email to the Tribunal Secretary, **the Tribunal** and the opposing party an electronic version (**without supporting documentation**) of the pleading with witness statements, expert reports and an index of all supporting documentation¹; and

13.1.2. upload the pleading **with witness statements, expert reports and** all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations.

13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

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

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- 13.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex A**.)
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat at the address indicated at §7.3 above and to each Member of the Tribunal at the addresses indicated at §13.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.

- 13.5. The addresses of the Tribunal Members are as follows:

Mr. Eduardo Zuleta Jaramillo Calle 87 # 10 -93, Oficina 302 Bogotá D.C., 110221 Colombia	Mr. Charles Poncet Poncet SARL, Rue Bovy-Lysberg 2, PO Box 5721, CH-1211 Geneva 11, Switzerland +41 22 404 1010	Mr. Raúl Emilio Vinuesa Alsina 2360, San Isidro, Buenos Aires 1642 Argentina +54 11 4723-6664
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- 13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.7. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 14.1. The arbitration shall proceed in accordance with the Procedural Calendar attached hereto as Annex B, except if the Tribunal, upon a showing of good cause by either party, on the Tribunal's own initiative, or by mutual agreement of the parties, decides that this Procedural Timetable requires amendment.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. The parties shall have an opportunity to request a reasonable number of documents (Request for Documents) from the other party after the filing of the Claimant's Claim Memorial on the Merits and the Respondent's Memorial on Objections to Jurisdiction (if applicable) and Counter-Memorial on the Merits. The document production phase shall consist of the following stages to be presented in a Word document using the Redfern schedule attached to this Procedural Order as Annex C:
 - 15.1.1. Request for production of documents.
 - 15.1.2. Responses and objections to requests for production.
 - 15.1.3. Reply on objections to requests for production.
 - 15.1.4. Voluntary production of requested documents.
 - 15.1.5. Tribunal decides on objections to requests for production.
 - 15.1.6. Ordered production of requested documents based on the Tribunal's decision.
- 15.2. The International Bar Association's Rules on the Taking of Evidence in International Arbitration adopted on May 29, 2010 shall provide guidance for the Tribunal and the parties in this proceeding
- 15.3. If a party fails, without satisfactory explanation, to produce any document requested in a Request for Documents to which it has not objected in due time or fails to produce any document or category of documents ordered by the Tribunal, the Tribunal may infer that such document or category of documents is adverse to the interests of the non-complying party.
- 15.4. If the Tribunal determines that a party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence
- 15.5. In its decision on costs, the Tribunal will make a special allocation of costs with regard to the Document production exercise, taking into consideration the reasonableness of the requests and objections, each Party's willingness to produce the Documents under its control and the relative success of each Party.

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16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 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 and subject to the considerations set forth in this section.
- 16.3. 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 special circumstances exist based on a reasoned written request followed by observations from the other party.
 - 16.3.1. 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.
 - 16.3.2. 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.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. 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. 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.
 - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document and shall be incorporated into the file name in accordance with § 16.5.4.

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- 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. 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.
- 16.7. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. 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 electronic copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing prior to their being used at the hearing, at a time to be decided at the pre-hearing organizational meeting.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports 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 special circumstances exist based on a reasoned written request 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 or expert.
18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. ICSID Arbitration Rules 35 and 36 shall govern the examination of witnesses and experts.

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- 18.2. Before a hearing and within the time limit to be set by the Tribunal, a party may be called upon by the Tribunal or the other party to produce at the hearing, for examination and cross-examination, any witness or expert whose testimony has been advanced with the party's pleadings. If a witness or expert has been called to testify by the adverse party but the witness or expert does not appear at the hearing, that witness' or expert's testimony shall be stricken from the record unless extraordinary circumstances exist that prevent him or her from testifying. The Tribunal may examine the witness or expert at any time, either before, during or after examination by one of the parties.
- 18.3. Without prejudice to the power of the Tribunal to request or allow the parties to produce further evidence at any stage of the proceedings, written witness statements and expert reports shall constitute the direct testimony of each factual or expert witness, respectively. Notwithstanding, expert witnesses shall be permitted to make a presentation on the contents of their respective expert report(s) of no more than 45 minutes prior to any cross-examination.
- 18.4. The procedure for examining witnesses at hearings shall be as follows:
- 18.4.1. Witnesses will be heard under the promise of truth;
 - 18.4.2. Each witness will be invited to confirm or correct his or her witness statement(s);
 - 18.4.3. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions.
 - 18.4.4. The adverse Party may then cross-examine the witness. Except for questions relating to the credibility of the witness, cross-examination shall be limited to (i) allegations contained in the witness' witness statement(s) and facts or evidence described therein; and (ii) matters that have arisen during direct examination.
 - 18.4.5. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination (redirect examination).
 - 18.4.6. The Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the parties, with unlimited scope.
 - 18.4.7. Under the control of the Tribunal a party may examine or cross examine a witness on matters not included in the testimony but that the witness should know considering his or her involvement in the facts of the case.

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- 18.4.8. After consultation with the parties, the Tribunal may order two or more witnesses to be examined concurrently (witness conferencing).
- 18.4.9. The Tribunal shall at all times have complete control over the examination of witnesses, including the right – on its own motion or at the reasoned request of a Party – to limit or exclude questions or questioning that it considers irrelevant or unnecessarily burdensome or repetitive, and request witnesses to limit answers that are lengthy or not responsive to the questions.
- 18.4.10. In any case, the Tribunal may, under its discretion and with prior consultation with the parties, call any person as a witness even if the parties have not called him/her nor have presented a written presentation.
- 18.5. Further details regarding the witness and expert examination will be addressed in due time before the hearing.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held by telephone or videoconference at a date and time to be determined by the Tribunal after consultation with the parties. It shall comprise a teleconference between the Tribunal, or its President, and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings
Arbitration Rules 20(1)(e) and 32

- 20.1. Hearings before the Tribunal other than procedural or organizational meetings shall be subject to the rules set out in this Section.
- 20.2. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

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- 20.3. The hearing shall be held in-person in Washington, DC, at the time specified in Annex B, unless the parties agree otherwise. If extraordinary circumstances such as the COVID-19 pandemic and restrictions on domestic and international travel make an in-person hearing impossible or impracticable, the parties shall seek agreement regarding whether an in-person or a virtual hearing is most appropriate.
- 20.4. 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.
- 20.5. The total hearing time shall be split evenly between the parties, subject to the time the Tribunal intends to reserve for itself for questions and other matters. Time shall be documented and measured using a chess clock with the Secretary of the Tribunal responsible for timekeeping.
- 20.6. 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.
- 20.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
 - 20.7.1. A chronology of relevant facts in tabular form;
 - 20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
 - 20.7.3. A list of the substantive issues required to be determined by the Tribunal.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

- 21.1. If a hearing is by videoconference, and not in-person, video recordings shall be made insofar as applicable (excluding, for instance, voice-only conference calls). Sound recordings shall be made of all voice-only hearings and sessions and all in-person hearings. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in both 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, if possible, be available in real-time using Live Note or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

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21.3. 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 parties in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

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

23. Schedule

23.1. The Timetable is attached as **Annex B**.

24. Publication and Confidentiality
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); NAFTA Article 1137(.4) and Annex 1137(.4); FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents,” before Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

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

24.2. Matters concerning confidentiality and privacy of the arbitral proceedings, rulings, orders, decisions and the Award shall be the subject of a separate confidentiality order that the Tribunal will issue in consultation with the disputing parties (the “Confidentiality Order”).

24.3. The written submissions by the Governments of Canada or the United States of America (“Non-Disputing 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 in **Annex B**.

24.4. Supporting witness statements, expert reports, exhibits or legal authorities submitted with any pleading shall not be published and may not be disclosed to any third party.

25. Non-disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

- 25.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in **Annex B**.
- 25.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, Non-Disputing NAFTA Parties may attend oral hearings, and are entitled to receive a copy of confidential versions of transcripts, written submissions and exhibits, including witness statements and expert reports. Non-Disputing NAFTA Parties shall be made aware of the Confidentiality Order, and pursuant to Article 1129 of the NAFTA, shall treat all information received from the Respondent as if they were a disputing party, notably in respect of protection of confidential information.
- 25.3. The disputing parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in **Annex B**.

[Signed]

Mr. Eduardo Zuleta Jaramillo
President of the Tribunal
Date: March 29, 2021

ANNEX A

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

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-ENG</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-ENG</i>
	<i>Rejoinder on Quantum-SPA</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
<i>R-0001-ENG</i>	
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-SPA</i>
	RESPONDENT’S LEGAL AUTHORITIES
<i>RL-0001-SPA</i>	
<i>RL-0002-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	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<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	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE

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	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-SPA</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-ENG</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-FR</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 B

PROCEDURAL CALENDAR

Description	By	Days	Date
First Session	All	0	March 11, 2021
Memorial	Claimant	151 days from the First Session	August 9, 2021
Counter-Memorial	Respondent	151 days from Memorial	January 7, 2022
Requests for Production of Documents	Claimant and Respondent	4 weeks from the date of the Counter Memorial	February 4, 2022
Production of Non-Objected Documents (on a rolling basis, if necessary) Objections to Document Requests	Claimant and Respondent	5 weeks from the Requests for Production of Documents	March 11, 2022
Reply to Objections to Document Requests	Claimant and Respondent	3 weeks from the Objections to Document Requests	April 1, 2022
Decision on Requests	Tribunal	2 weeks from Reply to Objections to Document Requests	April 15, 2022
Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	Claimant and Respondent	5 weeks from Decision on Requests	May 20, 2022
Reply	Claimant	101 days from Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	August 29, 2022
Rejoinder	Respondent	101 days from Reply	December 8, 2022
Submissions under NAFTA Article 1128	Non-disputing NAFTA Parties	4 weeks from Rejoinder (to account for the holidays)	January 5, 2023

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Comments to 1128 Submissions	Claimant and Respondent	3 weeks from Submissions under NAFTA Article 1128	January 26, 2023
Notification of Witnesses and Experts (if necessary)	Claimant and Respondent	3 weeks from Comments to 1128 Submissions	February 16, 2023
Pre-Hearing Organizational Meeting (if necessary)	All	4 weeks from Notification of Witnesses and Experts	March 16, 2023
Hearing	All	6 weeks. The Tribunal will hold in reserve six days.*	Beginning April 24, 2023
Award	Tribunal		TBD

* The tribunal considers that it needs no less than eight (8) weeks between the last pleadings and the hearing to prepare for the hearing. If the parties agree on modifications to the procedural calendar that affect the aforesaid eight-week term the Tribunal may, after consulting the parties, modify the date of the hearing.

ANNEX C

SCHEDULE FOR DOCUMENT REQUESTS

<u>No.</u>	<u>Documents or category of documents requested (requesting Party)</u>	<u>Relevance of materiality, incl. references to submission (requesting Party)</u>		<u>Reasoned objections to document production request (objecting Party)</u>	<u>Response to objections to document production request (requesting Party)</u>	<u>Decision (Tribunal)</u>
		<u>References to submissions, Exhibits, Witness Statements or Expert Reports</u>	<u>Comments</u>			