

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera
Arbitration Center LLC**

v.

Republic of Honduras

(ICSID Case No. ARB/23/2)

PROCEDURAL ORDER No. 1

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Mr. David W. Rivkin, Arbitrator

Prof. Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal

Mr. Marco Tulio Montañés-Rumayor

Assistant of the Tribunal

Mr. Antonio Gordillo

19 September 2024

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Introduction

On 31 August 2024, Respondent filed its Preliminary Objection dated 30 August 2024 in accordance with Article 10.20.5 of the Dominican Republic-Central America-United States of America Free Trade Agreement signed on 5 August 2004 [the “CAFTA-DR”].

Pursuant to Article 10.20.5 of the CAFTA-DR, following Respondent’s Preliminary Objection, “[t]he tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days”.

Accordingly, on 4 September 2024 the Tribunal suspended the proceedings on the merits, and on 9 September 2024, the Tribunal Secretary circulated to the Parties a draft Procedural Order No. 1 providing for the rules that will govern this preliminary phase of the arbitration [the “**Preliminary Phase**”]. If the case continues after the Preliminary Phase, a further Procedural Order will be issued for the remainder of the proceedings.

On 13 September 2024, the Parties submitted their comments on the Draft Procedural Order No. 1, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the Parties’ views, the Tribunal now issues the present Order:

Order

This Procedural Order sets out the rules that govern the Preliminary Phase.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1; CAFTA-DR Article 10.16.5

- 1.1. This Preliminary Phase is conducted in accordance with the ICSID Arbitration Rules in force as of 1 July 2022; except to the extent modified and/or supplemented by the CAFTA-DR.

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2. Constitution of the Tribunal and Declarations of the Members of the Tribunal
Arbitration Rule 21; CAFTA-DR Article 10.19

2.1. The Tribunal was constituted on 29 January 2024 in accordance with Article 10.19 of the CAFTA-DR.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19. Copies of these declarations were distributed to the Parties by the ICSID Secretariat as follows:

- Mr. David W. Rivkin's declarations and statements were transmitted to the Parties on 20 April 2023 and 29 February 2024;
- Prof. Raúl E. Vinuesa's declaration and accompanying statement were transmitted to the Parties on 15 November 2023; and
- Prof. Juan Fernández-Armesto's declarations and statements were transmitted to the Parties on 29 January 2024, 7 February, and 19 August 2024.

2.3. On 19 February 2024, Respondent filed a proposal for the disqualification of Mr. Rivkin. On 7 August 2024, the proposal for disqualification was declined by the Chair of the Administrative Council.

2.4. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions, and any Award, in accordance with ICSID Arbitration Rule 12(1). Likewise, the Members of the Tribunal have sufficient availability to comply with the time limits set out in Article 10.20.5 of the CAFTA-DR.

2.5. The contact details for the Members of the Tribunal are:

Prof. Juan Fernández-Armesto
Armesto & Asociados
General Pardiñas, 102
28006 Madrid - Spain
Tel: (34) 91 562 16 25
jfa@jfarmesto.com

Mr. David W. Rivkin
45 Rockefeller Plaza
20th floor
New York NY 10111
United States of America
Tel: +1 212 332 8558
dwrivkin@arbchambers.com

Prof. Raúl E. Vinuesa
Alsina 2360
San Isidro (1642)
Buenos Aires, Argentina
Tel: (54) 11 4723 6664
raul.vinuesa43@gmail.com

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3. Fees and expenses of the Members of the Tribunal
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses
 - 3.1. The fees and expenses of each Member of the Tribunal shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

4. Presence and quorum
Arbitration Rule 33
 - 4.1. The participation of all of the Members of the Tribunal by any appropriate means of communications is required at the case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35; CAFTA-DR Article 10.20.5
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. Orders, decisions, and any Award may be made by any appropriate means of communication.
 - 5.3. Orders, decisions, and any Award may be signed electronically.
 - 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
 - 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to reconsideration of such decision by the full Tribunal at the request of either Party.
 - 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.

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- 5.7. The Tribunal will use best efforts to issue all rulings within the time limits prescribed by the ICSID Arbitration Rules and the CAFTA-DR. For the avoidance of doubt, the Tribunal shall decide on the Preliminary Objection within the time limits set forth in Article 10.20.5 of CAFTA-DR, unless the Parties agree otherwise.
- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties. At any Party's request, a paper copy will be provided.

6. Power to fix time limits

Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the Preliminary Phase under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties and the co-arbitrators as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to reconsideration of such decision by the full Tribunal at the request of either Party.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Secretary of the Tribunal is Mr. Marco Tulio Montañés-Rumayor, 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:

Marco Tulio Montañés-Rumayor
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433 U.S.A.
Tel.: +12024581932
Fax: + 1 (202) 522-2615
Email: mmontanes@worldbank.org
Paralegal name: Federico Salon-Kajganich
Paralegal email: fsalonkajganich@worldbank.org
ICSID case address: ARB/23/2@icsidcases.worldbank.org

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

Marco Tulio Montañés-Rumayor
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building) 3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Assistant of the Tribunal

- 8.1. By communication of 9 September 2024, the Tribunal informed the Parties that it considered that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. The Tribunal proposed that Mr. Antonio Gordillo, an independent practitioner, be appointed as assistant to the Tribunal. Mr. Antonio Gordillo's *curriculum vitae* was distributed to the Parties.
- 8.2. As stated in the Tribunal's communication of 9 September 2024, the Assistant of the Tribunal shall work at all times under the specific instructions and continuous control and supervision of the Tribunal, and the Members of the Tribunal will not delegate to the Assistant of the Tribunal any of the duties and obligations incumbent on them as arbitrators.
- 8.3. The Assistant of the Tribunal shall undertake only such specific tasks as are assigned to him by the Tribunal, including:
- Attending meetings, hearings and deliberations, taking notes;
 - Summarizing submissions, reviewing authorities, conducting legal research, writing notes or memoranda on factual and legal issues, and preparing preliminary drafts of decisions or sections of awards, under the specific instruction and continuous control and supervision of the Tribunal.
- 8.4. The Tribunal shall ensure that the Assistant of the Tribunal does not duplicate the tasks of the ICSID Secretariat.
- 8.5. The Assistant of the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Tribunal, and shall sign a declaration to that effect.
- 8.6. The Parties received the Assistant's declaration of independence and impartiality on 9 September 2024. The Parties consented to the appointment of Mr. Antonio Gordillo as Assistant to the Tribunal on the terms set out above by communication

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of 13 September 2024. With the express agreement of the Parties, the Tribunal hereby appoints Mr. Antonio Gordillo as Assistant of the Tribunal.

8.7. Mr. Gordillo's contact details are the following:

101, rue Saint-Dominique
75007 Paris
France
Tel.: +33 616 97 41 29
Email: agf@jfarmesto.com

8.8. The Assistant of the Tribunal will be remunerated directly by the President of the Tribunal, without causing any additional cost to the Parties, save that the Assistant of the Tribunal will be entitled to reimbursement of reasonable expenses related to any hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.

8.9. The Tribunal may remove the Assistant of the Tribunal at its discretion. The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

9. Representation of the Parties
Arbitration Rule 2

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

For Claimants

Ms. Ank Santens
Mr. Ricardo Cruzat
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
United States of America

Mr. Francisco X. Jijón
White & Case LLP
701 Thirteenth St. NW
Washington, DC 20005
United States of America

For Respondent

Procurador Manuel Antonio Díaz Galeas
Abg. Nelson Gerardo Molina Flores
Abg. Marcio Ariel Canaca Curry
Edificio PGR, Residencial El
Trapiche Tegucigalpa, M.D.C
Honduras

Mr. Kenneth Juan Figueroa
Mr. Andrés Felipe Esteban
Foley Hoag LLP
1717 K Street NW, Suite 1200
Washington, D.C. 20006
United States of America

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Mr. Rodrigo Gil Ljubetic
Mr. Francisco Grob Duhalde
Jana & Gil Dispute Resolution
Av. Andrés Bello 2711, 9th Floor
Las Condes, 7550611
Santiago
Chile

9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.

10. Apportionment of costs and advance payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50; CAFTA-DR Article 10.26.1

10.1. The Parties shall cover the direct costs of the Preliminary Phase in equal parts, without prejudice to the decision of the Tribunal as to the allocation of costs.

10.2. Following registration of the Request for Arbitration, on 7 February 2023, ICSID requested that Claimants pay US\$200,000.00. ICSID received Claimants' payment on 13 March 2023. Upon the constitution of the Tribunal, by letters of 31 January 2024 and 4 March 2024, ICSID requested that Respondent pay US\$200,000.00. ICSID received Respondent's payment on 12 March 2024.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of proceeding

Convention Articles 62 and 63; Arbitration Rule 32; CAFTA-DR Article 10.20.1

11.1. Washington, DC shall be the place of the proceeding.

11.2. The Tribunal may hold hearings at any other place that it considers appropriate after consultation with the Parties. The method of holding a hearing will be determined in accordance with §21.

11.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.

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12. Procedural languages, translation and interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

12.1. English and Spanish are the procedural languages of the arbitration.

For Documents and Communications

12.2. The Tribunal and the ICSID Secretariat may communicate with the Parties in either procedural language.

12.3. Any document (e.g., written requests, applications, pleadings, expert opinions, witness statements, or supporting documents) may be filed in either procedural language. However, the Parties shall submit a translation into the other procedural language of all documents and only the relevant part of the supporting documents (exhibits and legal authorities) within seven days following the submission of the original document. The Tribunal may order a Party to provide a fuller or a complete translation of the supporting documents.

12.4. Any documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal orders a Party to provide a fuller or a complete translation.

12.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.

12.6. Documents exchanged between the Parties pursuant to §16.3 below (Production of Documents) may be produced in the original language and need not be translated unless and until they are submitted into the record. In the event that there is an inconsistency between the original language and the translation of pleadings, witness statements, expert reports, and supporting documents, the original language shall prevail.

For Hearing

12.7. The Tribunal will, in consultation with the Parties, determine whether simultaneous interpretation into both procedural languages will be provided during the hearing.

12.8. The costs of interpretation 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.

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For Tribunal's Rulings

- 12.9. The Tribunal may initially make any order or decision in either language and subsequently issue that order or decision in the other language. Both language versions shall be equally authentic.
- 12.10. The Tribunal will render any Award regarding the Preliminary Phase in either language, followed by a courtesy translation into the other language.

13. Routing of communications

Arbitration Rule 6

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Secretary of the Tribunal, the Tribunal, and the Assistant.
- 13.2. Electronic versions of communications to be filed simultaneously (by order of the Tribunal or agreement of the Parties) shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing Party, the Tribunal, and the Assistant.
- 13.3. The Secretary of the Tribunal shall not be copied on communications between the Parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:

Prof. Juan Fernández-
Armesto
jfa@jfarmesto.com

Mr. David W. Rivkin
dwrivkin@arbchambers.com

Prof. Raúl E. Vinuesa
raul.vinuesa43@gmail.com

14. Number of copies and method of filing of Parties' pleadings

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant filing date, the Parties shall submit by email to the Secretary of the Tribunal and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation (both exhibits and legal authorities).¹
- 14.2. Within there (3) days after the relevant filing date, the Parties shall upload to the file sharing platform that has been created by ICSID for purposes of this case.²

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

² Supporting documentation shall be uploaded as individual files, not in .zip format.

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- 14.2.1. an electronic version of the pleading, witness statements, expert reports; and
- 14.2.2. all the supporting documentation and an updated index.
- 14.3. Within seven (7) days after the relevant filing date, the Parties shall upload translations in accordance with 14.2 to the file sharing platform.

- 14.4. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (*i.e.*, OCR PDF or Word). Any spreadsheet or excel table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source.
- 14.5. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted, and the language of the document, and shall follow the naming conventions contained in **Annex A**.
- 14.6. At the conclusion of the written phase, on a date to be determined by the Tribunal, or at any other time the Tribunal or the ICSID Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, 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.³
- 14.7. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Secretary of the Tribunal by email.
- 14.8. A filing shall be deemed timely if sent by a Party by 11:59 PM, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

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15. Number and sequence of pleadings – Procedural Timetable
Arbitration Rule 30; CAFTA-DR Article 10.20

15.1. The proceeding will be conducted in accordance with the timetable in **Annex B**.

16. Submission of documents
Convention Article 44; Arbitration Rule 5

16.1. The documents shall be submitted in the manner and form set forth in §14 above.

16.2. Neither Party shall be permitted to submit any documents or other evidence outside of the submissions agreed to in the Procedural Timetable attached as **Annex B**, and may not rely on any such documents or other evidence unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by written observations from the other Party.

16.2.1. Should a Party request leave to file additional or responsive evidence, that Party may not annex the evidence that it seeks to file to its request.

16.2.2. If the Tribunal grants such an application for submission of additional evidence, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such evidence.

16.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).

16.4. Evidence shall be submitted in the following form:

16.4.1. The number of each exhibit containing a document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CLA-” 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 “RLA-” for legal exhibits containing authorities, etc.

16.4.2. Each document marshalled shall have an individual exhibit number. The Parties should not tender multiple documents under one exhibit number except exceptionally if the intent is to submit a compilation of documents to support a point.

16.4.3. Exhibits and legal authorities shall be submitted in PDF format and shall be numbered consecutively throughout these proceedings, commencing with

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“C-0001” and “R-0001,” and “CLA-001” and “RLA-001” respectively. The numbering shall also indicate the language of the document e.g., C-0001-ENG for a document submitted in English (original or translation) and C-0001-SPA for a document submitted in Spanish (original or translation). 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 §16.4.4.

16.4.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.

16.4.5. Exhibits should be submitted in a searchable electronic file format, whenever possible.

16.5. 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 submitting them with their pleadings. If a document has been previously submitted, it will be referenced by the number under which it was first submitted, unless there is a reason to resubmit the document (whether because, e.g., a larger portion of a book is submitted or a different or more comprehensive translation is submitted) in which case the document will be labeled “resubmitted” if resubmitted by the same Party or will be labeled with a new exhibit number if resubmitted by the other Party.

16.7. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, and (ii) do not contain information that is not in the record.

16.8. An electronic copy of each demonstrative exhibit shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunal, the Secretary of the Tribunal, the Assistant, the court reporter, and the interpreters as necessary before their use at a time to be determined in advance of the hearing.

16.9. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

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17. Witness statements and expert reports

Convention Article 43(a); Arbitration Rules 38 and 39; CAFTA-DR Article 10.24

- 17.1. Witness statements and expert reports, if any, shall be filed together with the Parties' pleadings.
- 17.2. Neither Party shall be permitted to submit any testimony at the hearing 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 written observations from the other Party (following the procedure outlined in §16.2).
- 17.3. Each witness statement shall be signed and dated by the witness and include:
 - 17.3.1. A disclosure statement detailing any past and present relations of the witness with any Party, counsel or Member of the Tribunal;
 - 17.3.2. A photograph of the witness;
 - 17.3.3. A description of the witness' position and qualifications, if relevant;
 - 17.3.4. A full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;
 - 17.3.5. Any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as documents);
 - 17.3.6. A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the hearing; and
 - 17.3.7. An affirmation of the truth of the witness statement.
- 17.4. Witness statements 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 Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 17.6. Expert reports shall be dated and signed by the expert or experts and contain:
 - 17.6.1. The full name of the expert;

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- 17.6.2. A photograph of the expert;
- 17.6.3. A disclosure statement detailing any past and present relations of the expert with any Party, counsel or Member of the Tribunal;
- 17.6.4. A brief description of the expert's qualifications;
- 17.6.5. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
- 17.6.6. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
- 17.6.7. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
- 17.6.8. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
- 17.6.9. The documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report (which may have their own sequential numbering); any spreadsheet or table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source;
- 17.6.10. An affirmation of his or her genuine belief in the opinions expressed in the report;
- 17.6.11. If more than one expert signed a report, each of them shall state the portion of the report for which he or she is responsible.
- 17.7. Expert reports shall be submitted in a searchable electronic file format and have consecutive numbering of pages, headings and paragraphs, as well as a detailed table of contents.
- 17.8. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts, after consultation with the Parties. This includes, but it is not limited to, the appointment of experts pursuant to CAFTA-DR Article 10.24.

18. Submissions by non-disputing parties
CAFTA-DR Articles 10.20.2 and 10.21

- 18.1. Pursuant to CAFTA-DR Article 10.20.2, a non-disputing CAFTA-DR party may make oral and written submissions to the Tribunal regarding the interpretation of CAFTA-DR.

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- 18.2. Any non-disputing CAFTA-DR party's written submission shall be filed within the time limit established in **Annex B**. A non-disputing CAFTA-DR party intending to make an oral submission at the hearing shall notify the Tribunal of that intent within the time limit established in **Annex B**.
- 18.3. In accordance with CAFTA-DR Article 10.21, neither the disputing Parties nor the tribunal shall disclose to any non-disputing party or to the public any protected information.

19. Submissions by *amicus curiae*
CAFTA-DR Article 10.20.3

- 19.1. Pursuant to CAFTA-DR Article 10.20.3, the Tribunal has the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.
- 19.2. Any application for leave to file an *amicus curiae* submission shall be filed within the time limit established in **Annex B**.
- 19.3. The procedure with respect to *amicus curiae* submissions shall be as follows:
 - 19.3.1. A petition to make an *amicus curiae* submission shall be submitted in electronic format to the Tribunal Secretary and distributed to the Tribunal and the Parties.
 - 19.3.2. A petition shall (i) be no more than 5 pages; (ii) be presented in English and Spanish; (iii) disclose any affiliation with the Parties; (iv) specify the interest the applicant has in the arbitration; (v) identify the issues of fact or law to be addressed in a written submission and why the applicant can bring perspective or insight distinct from the Parties; and (vi) attach the written submission; and.
 - 19.3.3. After providing the Parties an opportunity to comment on any *amicus curiae* petition, the Tribunal shall rule on its admissibility.
 - 19.3.4. The written submission shall be in English and Spanish and shall not exceed 15 pages. The written submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

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19.4. The Parties will have an opportunity to comment on any *amicus curiae* submissions in subsequent pleadings. The Tribunal may consider such *amicus curiae* submissions, but is not required to do so.

20. Pre-Hearing organizational meetings
Arbitration Rule 31

20.1. At a date to be determined by the Tribunal, 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 and any related organizational matters.

20.2. If necessary, a pre-hearing organizational meeting may be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference or videoconference between the Tribunal, or, if the full Tribunal cannot attend, its President, and the Parties and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

21. Virtual hearing
Arbitration Rule 32; CAFTA-DR Article 10.21.2

21.1. The oral procedure shall consist of a hearing for oral arguments and examination of witnesses and experts, if any.

21.2. The hearing shall be held virtually.

21.3. The hearing shall take place on 16 and 17 December 2024.

21.4. Pursuant to CAFTA-DR Article 10.21.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements. The Parties shall give the Tribunal advance notice prior to referencing protected information at the hearing. The Tribunal shall make appropriate arrangements to protect the information from disclosure.

22. Preparation for the hearing

22.1. The two weeks prior to the hearing shall be considered preparation time for the Parties and the Tribunal. Therefore, during that period, no procedural incident will be admitted and will be considered rejected *a limine*. However, the Party may present such incident at the beginning of the hearing and the Tribunal will adopt the appropriate decision after hearing the counterparty.

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23. Recordings of hearing and sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of the hearing and all sessions. The recordings shall be provided to the Parties and the Tribunal.
- 23.2. Verbatim transcripts in the procedural languages 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 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 seven days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections will 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.
- 23.4. Recordings of Hearings and Sessions will be subject to the provisions detailed on section 25 on transparency matters.

24. Post-hearing memorials and statements of costs

Convention Article 44; Arbitration Rules 51

- 24.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

25. Transparency matters

Convention Article 48(5), CAFTA-DR Article 10.21

- 25.1. The provisions on “Transparency of Arbitral Proceedings” set out in Article 10.21 of the CAFTA-DR shall apply to the Preliminary Phase.

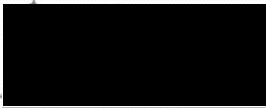
26. Data privacy and cybersecurity

- 26.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

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- 26.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 26.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

On behalf of the Tribunal,



Prof. Juan Fernández-Armesto
President of the Tribunal
Date: 19 September 2024

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; FR=French; 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-SPA</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-SPA</i>
	<i>Rejoinder on Quantum-ENG</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
RLA-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CLA-0001-ENG</i>	
<i>CLA-0002-SPA</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RLA-0001-SPA</i>	
<i>RLA-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE

Procedural Order No. 1 – Annex A

	<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-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>

Procedural Order No. 1 – Annex B

Annex B – Procedural Timetable for the Preliminary Phase

Claimants' Observations on the Preliminary Objection	<u>Thursday, 26 September 2024</u>
Respondent's Reply on the Preliminary Objection	<u>Friday, 25 October 2024</u>
Claimants' Rejoinder on the Preliminary Objection	<u>Monday, 25 November 2024</u>
Non-disputing parties' intention to make an oral submission at the Hearing	<u>Friday, December 6, 2024</u>
Virtual Hearing	<u>Monday, Tuesday, 16&17 December 2024</u>
Applications to intervene by <i>amicus curiae</i>	<u>Friday, 10 January 2025</u>
Parties' Observations on Applications to intervene by <i>amicus curiae</i>	<u>Friday, 17 January 2025</u>
Tribunal's Decision on Admissibility of Applications to intervene by <i>amicus curiae</i>	<u>Friday, 24 January 2025</u>
Submissions by non-disputing parties and <i>amicus curiae</i> authorized by the Tribunal	<u>Friday, 7 February 2025</u>
Parties' Observations on <i>amicus curiae</i> and non-disputing parties' submissions	<u>Friday, 14 February 2025</u>