

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE
TRADE AGREEMENT AND THE AGREEMENT BETWEEN THE UNITED STATES
OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA**

-and-

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

-between-

**AMERRA CAPITAL MANAGEMENT, LLC,
AMERRA AGRI FUND, L.P.,
AMERRA AGRI OPPORTUNITY FUND, L.P., AND
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ON BEHALF OF THE
JPMORGAN CHASE RETIREMENT PLAN**

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/23/1

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator
Mr. Eduardo Siqueiros T., Arbitrator
Prof. Jorge Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID

May 11, 2023

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Introduction

The first session of the Tribunal was held on April 14, 2023, at 10:00 a.m. Washington, D.C. time, by video conference. The session was adjourned at 11:15 a.m.

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

Participating in the conference were:

Members of the Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator
Mr. Eduardo Siqueiros T., Arbitrator
Prof. Jorge Viñuales, Arbitrator

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

Assistant to the Tribunal

Ms. Emily Hay

Participating on behalf of the Claimants:

Mr. Henry G. Burnett, King & Spalding LLP
Mr. Fernando Rodríguez Cortina, King & Spalding LLP
Ms. Eldy Roche Quintanilla, King & Spalding LLP
Mr. Arturo Oropeza Casas, King & Spalding LLP
Ms. Beatriz Leycegui Gardoqui, SAI Derecho & Economía S.C.
Ms. Itzel Martínez Hernández, SAI Derecho & Economía S.C.
Mr. Patsy Morabito, Amerra Capital Management LLC

Participating on behalf of the Respondent:

Mr. Alan Bonfiglio Ríos, Secretaría de Economía
Mr. Luis Fernando Muñoz Rodríguez, Secretaría de Economía
Ms. Rosalinda Toxqui Tlaxcalteca, Secretaría de Economía
Mr. Oscar Manuel Rosado Pulido, Secretaría de Economía
Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP
Mr. Gary J. Shaw, Pillsbury Winthrop Shaw Pittman LLP

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on March 2, 2023; and

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- The parties' comments on the Draft Procedural Order received on April 5, 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

This order records the agreement of the parties on procedural matters set out herein, and where no agreement was reached, sets forth the Tribunal's directions, having heard the parties and deliberated.

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

Order:

1. Commencement of Arbitration

- 1.1. By Notice of Arbitration dated August 3, 2022, the Claimants commenced arbitration proceedings against the Respondent under the North American Free Trade Agreement ("NAFTA"), Chapter 11, Section B (Article 1120(1)(c)), and subject to the United Nations Commission on International Trade Law Arbitration Rules, adopted by the UN General Assembly on December 15, 1976 (the "UNCITRAL Rules").
- 1.2. In accordance with the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on August 4, 2022, the date on which the Respondent received the Notice of Arbitration.

2. Applicable Arbitration Rules

Articles 1120 and 1139 of the NAFTA

- 2.1. These proceedings are conducted in accordance with the UNCITRAL Rules of 1976, except to the extent that they are modified by Section B, Chapter 11 of the NAFTA.

3. Contact Details of the Tribunal

- 3.1. The Tribunal was constituted on February 23, 2023 in accordance with the UNCITRAL Rules and the NAFTA, as set out in §3 of the Tribunal's Terms of Appointment.
- 3.2. The contact details of the Members of the Tribunal are as follows:

Mr. Eduardo Siqueiros T.
ARB-INTER, S.C.
Paseo de los Tamarindos No. 150-PB

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Bosques de las Lomas
05120, Mexico City
United Mexican States
Email: esiqueiros@arbinter.mx

Prof. Jorge Viñuales
Maison de la Paix
Office P1-715
Chemin Eugène Rigot 2
1202 Geneva
Switzerland
Email: jorge.vinuales@graduateinstitute.ch

Prof. Albert Jan van den Berg
Hanotiau & van den Berg
IT Tower, 9th Floor
Avenue Louise 480 B.9
1050 Brussels
Belgium
Email: ajvandenbergh@hvdb.com

4. Administrative Authority and Secretary of the Tribunal
ICSID Administrative and Financial Regulation 25

- 4.1. By Claimants' communication of January 11, 2023, and Respondent's communication of January 14, 2023, the parties confirmed their agreement to the designation of the International Centre for Settlement of Investment Disputes (ICSID) as the Administering Authority. On January 19, 2023, 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 Rules. The cost of ICSID's services shall be included in the costs of the arbitration.
- 4.3. The Tribunal Secretary is Ms. Mercedes Cordido-Freytes de Kurowski, 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. Mercedes Cordido-F. de Kurowski
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433

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USA
Tel.: + 1 (202) 473-3171
Fax: + 1 (202) 522-2615
Email: mkurowski@worldbank.org
Paralegal email: fsalonkajganich@worldbank.org

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

Ms. Mercedes Cordido-F. de Kurowski
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. +1 (202) 473-3171

5. Presence and Quorum

- 5.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

6. Decisions and Procedural Rulings of the Tribunal
Article 31 of the UNCITRAL Rules

- 6.1. All awards and decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 6.2. 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, or if a co-arbitrator cannot be reached in a timely manner, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 6.4. 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.

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6.5. The Tribunal shall make its best efforts to issue its decisions and awards within a reasonable time period.

7. Power to Fix Time Limits

Article 23 of the UNCITRAL Rules

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

7.2. 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.

8. Contact Details of the parties

8.1. Representation of the parties shall be in accordance with paragraph 1 of the Terms of Appointment. Contact details for the parties and counsel are ~~also~~ contained in the Terms of Appointment.

9. Place of Arbitration

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

9.1. Toronto, Ontario, Canada shall be the place of arbitration.

9.2. The hearings shall be held at ICSID's headquarters in Washington, D.C., or at any other place that it considers appropriate if the parties so agree.

9.3. The Tribunal may deliberate at any place it considers convenient.

9.4. All awards shall be deemed to be made at the place of arbitration, regardless of where the award is signed.

10. Procedural Language(s), Translation and Interpretation

Article 17 of the UNCITRAL Rules

10.1. English and Spanish are the procedural languages of the arbitration both being equally valid.

10.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat by itself or on behalf of the Tribunal may be in either procedural language.

For Parties' Pleadings

- 10.3. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation, documentary exhibits and legal authorities may be submitted in either procedural language, with no requirement of translation in the other language.
- 10.4. The parties are allowed to submit translations from one procedural language to the other as they consider suitable. In addition, the Tribunal may require that a party translate any document in whole or in part. Any such translation shall be submitted within a reasonable time period to be established by the Tribunal and shall not impose any translation burden on the other Party.
- 10.5. 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. Each party will bear the costs of its own translations whether voluntarily submitted or as requested by the Tribunal subject to a subsequent award on costs.
- 10.6. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.
- 10.7. Any document written in a language other than the procedural languages must be accompanied by a translation into one of the procedural languages within the time frame of §10.3 above.

For Hearings

- 10.8. The Hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 10.9. The testimony of a witness called for examination during the hearing who prefers to give evidence other than Spanish or English shall be interpreted simultaneously into both procedural languages.
- 10.10. 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.
- 10.11. 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.

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For Tribunal's Documents Except the Award

- 10.12. The Tribunal may initially make any order or decision in English and subsequently issue that order or decision in Spanish, at the request of either party. Both language versions shall be equally authentic.

For Tribunal's Award

- 10.13. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

11. Routing of Communications

Article 15(3) of the UNCITRAL Rules

- 11.1. Written communications in the case shall be transmitted by email or other electronic means to the opposing party, the Tribunal Secretary, the Tribunal, and the Assistant to the Tribunal. If such communications contain attachments, they shall be text searchable (i.e., OCR PDF or Word Document).
- 11.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 11.3. 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.
- 11.4. 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.

12. Written and Oral Procedures

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

- 12.1. The proceeding shall consist of a written phase followed by an oral phase.
- 12.2. The number and sequence of written pleadings shall be as provided in the Procedural Timetable of **Annex A**. The parties will submit the pleadings by the deadlines established in the Procedural Timetable, 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.

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- 12.3. The Statement of Defence shall be in rebuttal to the Statement of Claim. The Statement of Reply shall be in rebuttal to the Statement of Defence, and the Statement of Rejoinder shall be in rebuttal to the Statement of Reply.
- 12.4. In accordance with Article 21(3) of the UNCITRAL Rules, a plea that the Tribunal does not have jurisdiction shall be raised not later than the Statement of Defence. In general, in accordance with Article 21(4) of the UNCTRIAL Rules, the Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Tribunal may proceed with the arbitration and rule on such plea in the final Award. Respondent may file a Request for Bifurcation in respect of any objection to jurisdiction together with its Statement of Defence, as set out in the Procedural Timetable of **Annex A**. In the event that a Request for Bifurcation is filed, the Tribunal shall issue a decision after receiving the Parties' comments.
- 12.5. If a Request for Bifurcation is granted, the Tribunal shall establish a procedural timetable for such preliminary phase after consultation with the Parties. If no preliminary stage pursuant to Article 21(4) is requested or decided, the arbitration shall continue with the procedural calendar set out in **Annex A**.
- 12.6. If a preliminary stage on the Tribunal's jurisdiction is requested and decided, and it ends with a decision confirming the Tribunal's jurisdiction, the procedural calendar for the merits stage or stages of the arbitration will be discussed by the parties and established by the Tribunal shortly after its initial award on jurisdiction.

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

- 13.1. By the relevant filing date, the parties shall:
 - 13.1.1. submit by email to the Tribunal Secretary, the opposing party, the Members of the Tribunal and the Assistant to the Tribunal an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading without supporting exhibits and without legal authorities ("**Email Filing**");¹ and
 - 13.1.2. By the end of the fifth (5) business day following the Email Filing referred above, the parties shall upload the pleading, with all the supporting documentation to the BOX filesharing platform that has been created by ICSID for purposes of this case ("**Platform Filing**").
- 13.2. The Tribunal does not wish to receive hard copies of any submission from the parties.

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

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- 13.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.4. All pleadings shall be accompanied by a cumulative index to 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, the language of the document, and shall be filed following the naming conventions contained in **Annex B**.
- 13.5. 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 and each Member of the Tribunal a USB drive readable both on PC and Mac, 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. Additionally, the parties shall upload the consolidated hyperlinked index of the entire case file to the sharing platform. Prof. Viñuales will not require this USB drive.
- 13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary 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. IBA Rules as Guidelines for Rulings on Evidence

- 14.1. 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* (2020) (the “IBA Rules”) for guidance as to the practices commonly accepted in international arbitration, but it shall not be bound to apply them.

15. Production of Documents

- 15.1. The Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) (“IBA Rules”) in relation to document production in this case.
- 15.2. Each party may request the production of a reasonable number of documents from the other party in accordance with the Procedural Timetable set out in **Annex A**.

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- 15.3. The parties shall seek agreement on production requests to the greatest extent possible
- 15.4. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested specifying why the documents sought are relevant to the dispute and material to the outcome of the case, including a date or range of dates and the subject matter, and the identity of the recipients and senders insofar as possible. For greater certainty, it would not suffice to make general and unspecific requests such as “all documents related to” a particular subject or matter, and also stating precise references to the relevant parts of the parties’ submissions.
- 15.5. Unless the requested party objects to production, it shall produce the requested documents within the schedule set out 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 timetable.

Objections

- 15.6. If the requested party objects to production, the following procedure shall apply:
 - 15.6.1. The requested party shall submit a response stating which documents or classes of documents it objects to producing by the date specified in the **Annex A**. The response shall state the reasons for each objection and shall indicate the documents, if any, that the party would be prepared to produce instead of those requested.
 - 15.6.2. 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.
 - 15.6.3. The requesting party shall respond to the other party’s objection, indicating, with reasons, whether it disputes the objection.

Decision by the Tribunal to Disputed Request

- 15.6.4. To the extent that agreement cannot be reached between the requesting and the requested party, the parties shall jointly 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.
- 15.6.5. 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**. The parties shall

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use the model format throughout their exchange of requests, objections, and responses.

15.6.6. The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced in accordance with the schedule set out in **Annex A** of this Order.

15.6.7. 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.

15.6.8. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.

15.6.9. If the Tribunal determines that a disputing 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.

15.7. 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.

15.8. When practical and not unduly burdensome, the producing party shall group the documents produced by request and identify the relevant request.

15.9. 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.

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

15.11. Documents produced according to the above procedure shall not be considered part of the record unless and until a Party subsequently submits them in accordance with the provisions of §13 of this Order.

16. Documentary Evidence

Article 24 of the UNCITRAL Rules

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

16.2. The documents shall be submitted in the manner and form set forth in §16.5 below.

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- 16.3. 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.
- 16.3.1. 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.
- 16.3.2. 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.
- 16.4. 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.
- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. The number of each Exhibit containing a document produced by the Claimant 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.
- 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. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG-SPA for a document submitted simultaneously in English and Spanish.
- 16.5.5. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex B**.
- 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 attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. 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, (ii) do not contain information not in the record.
- 16.9. An electronic copy of each demonstrative exhibit and PowerPoint slides 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 Tribunal Secretary, the Assistant to the Tribunal, to the court reporter and to the interpreters immediately before their use at the hearing. Hard copies shall also be provided, if requested.
- 16.10. 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.

17. Witness Statements and Expert Reports

Articles 25 and 27 of the UNCITRAL Rules

- 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 exceptional 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.
- 17.4. In accordance with Article 27 of the UNCITRAL Rules, the Tribunal may, on its own initiative or at the request of a party, appoint one or more experts. The Tribunal shall consult with the parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

18. Examination of Witnesses and Experts

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

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- 18.1. 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. Each party shall be responsible for securing the appearance of its own witnesses at the hearing.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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.
- 18.5. Each party shall notify the opposing party which witnesses and experts it intends to call for cross-examination on the date set out in **Annex A**. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to examine, if any.
- 18.6. 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.
- 18.7. 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 a confirmation by the witness or expert of their identity and the veracity of their report, and any corrections that might need to be made. In lieu of direct examination an expert may provide a brief presentation of the key points of his or her report for no longer than 45 minutes in principle, subject to any longer or shorter timing directed by the Tribunal based on the requirements specific to the type of expert, to be decided at the Pre-Hearing Organizational Meeting.
- 18.8. 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

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reasonably be able to provide an opinion. Re-direct examination shall be limited to the subject of cross-examination.

- 18.9. Witnesses shall be allowed in the hearing room after having given their oral evidence. Experts shall be allowed in the hearing room, and shall be permitted access to the hearing transcripts, at any time.
- 18.10. A fact witness, who is not a party representative, shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, or listen to or watch any audio or video recording of the oral arguments or oral testimony, prior to his or her examination. A fact witness who is a party representative shall be examined first, to the extent possible.
- 18.11. The order in which the witnesses and experts shall be heard shall be discussed at the pre-hearing organizational meeting.

19. Pre-Hearing Organizational Meeting

- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties by video conference between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

Article 25 of the UNCITRAL Rules

- 20.1. The hearing shall be held on the dates set out in **Annex A**.
- 20.2. Hearings may be held in person or by any other means of communication as determined by the Tribunal after consultation with the parties. An in-person hearing shall be held at a place to be determined in accordance with §9 above. The Tribunal shall, if at all possible, participate in the merit hearings in person.
- 20.3. Having due regard to the views of the parties and the specific circumstances of the case, including any relevant travel restrictions and/or social distancing health and safety measures, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 20.4. The Members of the Tribunal shall determine the next steps following the hearing, including in relation to deliberations.
- 20.5. Allocation of time at the hearing shall be decided by the Tribunal in consultation with the parties at the Pre-Hearing Organizational Conference.

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20.6. In accordance with Article 25(4) of the UNCITRAL Rules, hearings shall be held *in camera* unless the parties agree otherwise.

21. Records of Hearings and Sessions

Article 25(3) of the UNCITRAL Rules

21.1. 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.

21.2. Verbatim transcript(s) in the 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 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.

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 court reporter in the revised transcripts.

22. Post-Hearing Submissions and Statements of Costs

Article 38 of the UNCITRAL Rules

22.1. The Tribunal shall decide at the close of 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, and any directions regarding the filing of new evidence or authorities.

22.2. At the conclusion of the hearing, after consulting with the parties, the Tribunal shall determine the date as well as in what form the parties shall file their statements of costs.

23. 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

23.1. 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”).

Procedural Order No. 1

- 23.2. ICSID shall have permission to publish the fact of the existence of the arbitration, the names of the parties, counsel representing the parties and the Members of the Tribunal on its website.
- 23.3. In accordance with NAFTA Annex 1137.4, the Note of Interpretation of the North American Free Trade Commission of 31 July 2001, and subject to the Confidentiality Order, ICSID shall publish redacted, public versions of decisions and procedural orders of the Tribunal, as well as the Award. For the sake of clarity, the parties' pleadings and written submissions, witness statement, expert reports, transcripts, documentary evidence and legal authorities, or excerpts thereof, shall not be subject to publication.
- 23.1. 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.

24. Non-Disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

- 24.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in **Annex A**.
- 24.2. 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 any confidentiality measures, 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.
- 24.3. The disputing parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in **Annex A**.

25. *Amicus Curiae* Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; Arbitration Rule 37(2);

- 25.1. If a request for the submission of an *amicus curiae* brief is filed by the date indicated in **Annex A**, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 37(2) and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of October 7, 2003.
- 25.2. By the relevant dates indicated in **Annex A**, the disputing parties shall have the

opportunity to: (1) make submissions on any request for the submission of an *amicus curiae* brief; and (2) file simultaneous observations on issues raised in any *amicus curiae* brief submitted pursuant to a decision of the Tribunal.

- 25.3. If either party intends to rely at any hearing on a document referenced in an *amicus curiae* submission which is not already part of the record, that party must notify the other party and the Tribunal at least 24 hours in advance of the intended use. The notice shall specify the reference number to be given to the document. If the notice is provided by email, an electronic copy of the relevant document shall be attached to the email, and a hard copy of the document shall be submitted in advance of its use at the hearing.

26. Disability Inclusion

- 26.1. At any point during the proceedings, but ideally as soon as practicable, either party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that – without reasonable accommodation – would significantly impair a person’s ability to participate in work related to an arbitration.

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: May 11, 2023

ANNEX A

TIMETABLE

Description	By	Days	Date	PO1 §
First Session	All	0	Fri-14-Apr-2023	
Statement of Claim	Claimants	122	Mon-14-Aug-2023	12.2
Statement of Defence including Jurisdiction and Bifurcation Request, if any	Respondent	122	Thu-14-Dec-2023	12.2, 12.3, 12.4
Production of Documents Phase				
Requests for Production of Documents	Claimants and Respondent	21	Thu-04-Jan-2024	15.4
Objections to Document Requests	Claimants and Respondent	21	Thu-25-Jan-2024	15.6
Production of Non-Objected Documents (rolling basis, if necessary)	Claimants and Respondent	18	Mon-12-Feb-2024	15.5
Responses to Objections	Claimants and Respondent	3	Thu-15-Feb-2024	15.6.3
Decision on Requests	Tribunal	14	Thu-29-Feb-2024	15.6.6
Production as Ordered	Claimants and Respondent	32	Mon-01-Apr-2024	15.6.6
Reply	Claimants	112	Mon-22-Jul-2024	12.2, 12.3
Rejoinder	Respondent	112	Mon-11-Nov-2024	12.2, 12.3
Applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TBD	15	Tue-26-Nov-2024	25.1
Submissions under NAFTA Article 1128, if any	TBD	0	Tue-26-Nov-2024	24.1
Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Claimants and Respondent	15	Wed-11-Dec-2024	25.2
Comments on NAFTA Article 1128 submissions	Claimants and Respondent	0	Wed-11-Dec-2024	24.3

Amerra Capital Management LLC et al v. United Mexican States
(ICSID Case No. UNCT/23/1)

Procedural Order No. 1 – Annex A

Notification of Witnesses and Experts	Claimants and Respondent	2	Fri-13-Dec-2024	18.5
Pre-Hearing Organizational Meeting	All	7	Fri-20-Dec-2024	19.1
Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	0	Fri-20-Dec-2024	25.1
Claimants' and Respondent's comments on non-disputing party (<i>amicus</i>) submissions	Claimants and Respondent	17	Mon-06-Jan-2025	25.2
Hearing Commencement	All	56	Mon-03-Mar-2025	20.1
Hearing Ends (1 week + 1 week reserve)	All	11	Fri-14-Mar-2025	20.1
Simultaneous Post-Hearing Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	22.1
Simultaneous Reply Post-Hearing Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	22.1
Simultaneous Costs Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	22.2
Award	Tribunal		TBD	6.5

ANNEX B

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>Objections to Jurisdiction-SPA</i>
	<i>Statement of Defence on the Merits and Response 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-Objections to 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-Claimants' Submission 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
	<i>Legal Opinion-Tom Kaine-Statement of Defence on the Merits-ENG</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-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

MODEL REDFERN SCHEDULE FOR DOCUMENT REQUESTS

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

ANNEX D

TERMS OF APPOINTMENT

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE
TRADE AGREEMENT AND THE AGREEMENT BETWEEN THE UNITED STATES OF
AMERICA, THE UNITED MEXICAN STATES, AND CANADA**

-and-

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

-between-

**AMERRA CAPITAL MANAGEMENT, LLC,
AMERRA AGRI FUND, L.P.,
AMERRA AGRI OPPORTUNITY FUND, L.P., AND
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ON BEHALF OF THE
JPMORGAN CHASE RETIREMENT PLAN**

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/23/1

TERMS OF APPOINTMENT

Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator
Mr. Eduardo Siqueiros T., Arbitrator
Prof. Jorge Viñuales, Arbitrator

Administered by

International Centre for Settlement of Investment Disputes

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID

May 11, 2023

1. Parties to the Arbitration

The Claimants

Amerra Capital Management, LLC (USA),
Amerra Agri Fund, L.P. (USA),
Amerra Agri Opportunity Fund, L.P. (USA), and
JPMorgan Chase Bank, National Association, on
behalf of the JPMorgan Chase Retirement Plan
(USA)

Counsel for the Claimants

King & Spalding LLP

Henry G. Burnett
Fernando Rodriguez Cortina
Charles Rosenberg
Eldy Quintanilla Roché
Arturo Oropeza Casas
Sophia Sepúlveda Harms

SAI Economía y Derecho
Beatriz Leycegui
Itzel Martínez Hernández

The Respondent

The United Mexican States

Counsel for the Respondent

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Alan Bonfiglio Ríos
Luis Fernando Muñoz Rodríguez
Rosalinda Toxqui Tlaxcalteca
Pamela Hernández Mendoza
Alejandro Rebollo Ornelas
Oscar Manuel Rosado Pulido

Pillsbury Winthrop Shaw Pittman LLP

Stephan E. Becker
Gary J. Shaw

1. Representation

- 1.1 The Parties have designated their representatives listed below as being authorized to act on their behalf in these arbitration proceedings.
- 1.2 To the extent they have not already done so, the Parties shall confirm these designations by each providing to the other Party and to the Arbitral Tribunal copies of the powers of attorney or letters of representation granted to their representative(s).
- 1.3 In the event of any change by a Party of its representatives or of the contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each Member of the Tribunal, and to the International Centre for Settlement of Investment Disputes (“ICSID”). Absent such notification, communications sent to the addresses set out below shall be valid. The Tribunal reserves the right to exclude the participation of any representatives from any hearing or other meeting where their participation has not been duly notified sufficiently in advance of that hearing or meeting. In the event that a change in the representation of a Party may create a conflict of interest, or a reasonable appearance of a conflict of interest with one or more of the arbitrators, the Arbitral Tribunal may, after consulting with the parties, take appropriate measures to safeguard the integrity and stability of the proceeding, including by preventing the participation of the new representative.

2. Commencement of Arbitration

- 2.1 By Notice of Arbitration dated August 3, 2022, the Claimants initiated arbitral proceedings against the Respondent pursuant to Annex 14-C of the Agreement between the United States of America, the United Mexican States, and Canada (“USMCA”) and Section B of Chapter 11 of the North American Free Trade Agreement (“NAFTA”), invoking Articles 1116, 1120 and 1122 thereof.
- 2.2 The Parties agree that the proceedings are deemed to have commenced on August 4, 2022, the date on which the Respondent received the Notice of Arbitration.

3. Constitution of the Tribunal

- 3.1 The Claimants appointed as arbitrator on November 1, 2022:

Mr. Eduardo Siqueiros T.
ARB-INTER, S.C.
Paseo de los Tamarindos No. 150-PB
Bosques de las Lomas
05120, Mexico City
United Mexican States
Email: esiqueiros@arbinter.mx

- 3.2 The Respondent appointed as arbitrator on December 17, 2022:

Prof. Jorge Viñuales

Maison de la Paix
Office P1-715
Chemin Eugène Rigot 2
1202 Geneva
Switzerland
Email: jorge.vinuales@graduateinstitute.ch

- 3.3 After consultations with the ICSID Secretariat and consideration of candidates proposed by the latter, on February 21, 2023, the Parties agreed to the appointment as President of:

Prof. Albert Jan van den Berg

Hanotiau & van den Berg
IT Tower, 9th Floor
Avenue Louise 480 B.9
1050 Brussels
Belgium
Email: ajvandenbergh@hvdb.com

- 3.4 On February 23, 2023, ICSID informed the Parties that Prof. van den Berg had confirmed his availability and had accepted to serve as President of the Tribunal in the above-referenced case.
- 3.5 The Members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the Members of the Tribunal confirms 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 or come to his attention during the arbitration.
- 3.6 The Parties confirm that the Members of the Tribunal have been validly appointed and that the Tribunal has been duly and validly constituted in accordance with the 1976 UNCITRAL Arbitration Rules (the “**UNCITRAL Rules**”) and the NAFTA. The Parties also confirm 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 as at the date of adoption of these Terms of Appointment.
- 3.7 The Members of the Tribunal confirm that they have sufficient availability during the next 36 months to dedicate to this case.

4. Applicable Procedural Rules

- 4.1 The Parties agree that the 1976 edition of the UNCITRAL Rules apply to this arbitration, except to the extent that they are modified by Section B, Chapter 11 of the NAFTA.
- 4.2 For issues not dealt with in the UNCITRAL Rules or in Section B, Chapter 11 of the NAFTA, the Tribunal shall apply any rules that the Parties have agreed upon. In the absence of such agreement, the Tribunal shall apply the rules it deems appropriate, provided that the

Parties are treated with equality and that at every stage of the proceedings each Party is given reasonable opportunity of presenting its case.

5. Contact Details of the Parties

5.1 The contact details for the Parties' respective representatives are as follows:

<u>For Claimants</u>	<u>For Respondent</u>
King & Spalding LLP (Miami, Houston, Denver, Washington D.C., offices)	Mr. Alan Bonfiglio Ríos Director General de Consultoría Jurídica de Comercio Internacional Pachuca 189, Col. Condesa, Demarcación Territorial Cuauhtémoc, Ciudad de México, C.P. 06140. Tel. 5557299100 Ext. 15200 alan.bonfiglio@economia.gob.mx
Henry G. Burnett hburnett@kslaw.com +1 3054626012	Mr. Luis Fernando Muñoz Rodríguez Director de Consultoría Jurídica de Comercio Internacional luis.munoz@economia.gob.mx
Fernando Rodríguez Cortina Frodriguez-cortina@kslaw.com +1 2125562214	Ms. Rosalinda Toxqui Tlaxcalteca Directora de Consultoría Jurídica de Comercio Internacional rosalinda.toxqui@economia.gob.mx
Charles Rosenberg crosenberg@kslaw.com +1 2026265503	Ms. Pamela Hernández Mendoza Subdirectora de Consultoría Jurídica de Comercio Internacional pamela.mendoza@economia.gob.mx
Eldy Quintanilla Roché eroche@kslaw.com +1 7205352333	Mr. Alejandro Rebollo Ornelas Jefe de Departamento de Consultoría Jurídica de Comercio Internacional alejandro.rebollo@economia.gob.mx
Arturo Oropeza Casas aoropeza@kslaw.com +1 7132767365	Mr. Oscar Manuel Rosado Pulido Jefe de Departamento de Consultoría Jurídica de Comercio Internacional oscar.rosado@economia.gob.mx
Sophia Sepulveda Harms sharms@kslaw.com +1 7132767334	Mr. Stephan E. Becker
SAI Derecho y Economía	
Beatriz Leycegui Gardoqui blg@sai.com.mx +52 55 59856685	
Itzel Martínez Hernández imh@sai.com.mx	

+52 55 59856645	Pillsbury Winthrop Shaw Pittman LLP stephan.becker@pillsburylaw.com Gary J. Shaw Pillsbury Winthrop Shaw Pittman LLP gary.shaw@pillsburylaw.com
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6. Place of Arbitration

6.1 The place of arbitration is agreed by the Parties as Toronto, Ontario, Canada.

7. Language of Proceedings

7.1 Pursuant to Article 17(1) of the UNCITRAL Rules, the parties agree that both English and Spanish are the procedural languages of the arbitration both being equally valid].

8. Case Administration

8.1 In accordance with the Parties' agreement, ICSID shall act as Administering Authority and shall administer the arbitral proceedings on the terms set forth in this section.

8.2 ICSID shall maintain an archive of filings of correspondence and submissions.

8.3 ICSID shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.

8.4 Upon request, ICSID shall carry out administrative and logistical tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out such tasks. Work carried out by ICSID shall be billed in accordance with its schedule of fees.

8.5 The contact details of ICSID are as follows:

Attention: Ms Mercedes Cordido-F. de Kurowski

ICSID

MSN C3-300

1818 H Street, N.W.

Washington, D.C. 20433

USA

Tel.: + 1 (202) 473-3171

Fax: + 1 (202) 522-2615

Email: mkurowski@worldbank.org

8.6 The appointment of ICSID as Administering Authority shall not affect the legal place of arbitration, the geographical location of meetings and hearings, the applicable procedural rules,

or other aspects of the arbitral proceedings, which shall remain subject to these Terms of Appointment, any agreement between the Parties, and any decisions by the Tribunal.

9. Assistant to the Tribunal

9.1 Subject to the Parties' approval, the Tribunal shall appoint an Assistant to the Tribunal, for the benefit of the overall cost and time efficiency of the proceedings.

9.2 The Assistant to the Tribunal shall perform such tasks as are assigned to her or him by the Tribunal or the President of the Tribunal, including:

- (a) assisting the Tribunal in the review of the evidence and of the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, and research on specific factual or legal issues;
- (b) assisting the Tribunal in the preparation and communication of its decisions to the Parties on issues of procedure and substance, including by preparing initial drafts of procedural orders and awards, under the direction and supervision of the Tribunal or its President;
- (c) liaising with the Tribunal Secretary and the ICSID Secretariat regarding any of these tasks; and
- (d) providing other support to the Tribunal or its Members, especially its President, at any time, especially during hearings and deliberations, which the Assistant to the Tribunal may attend.

9.3 Under no circumstances shall the Tribunal delegate any decision-making functions to the Assistant to the Tribunal. The Assistant to the Tribunal will work at all times under the specific instructions and continuous control and supervision of the Tribunal.

9.4 The Assistant to the Tribunal shall be subject to the same independence, impartiality and confidentiality obligations as the Members of the Tribunal and shall be afforded the same immunities as the Tribunal.

9.5 The Assistant to the Tribunal will not charge for her time on this matter, which shall be subsumed in the fees of the President of the Tribunal. The Assistant to the Tribunal will be reimbursed for reasonable expenses incurred in connection with attending meetings and hearings, in accordance with the ICSID Memorandum on Fees and Expenses.

10. Deposit and Apportionment of Costs

10.1 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.

- 10.2 By letter of February 27, 2023, ICSID requested that each party pay a deposit of US\$200,000 to defray the initial costs of the proceeding.² ICSID received Claimants' payment on March 7, 2023. ICSID has not yet received the Respondent's payment.
- 10.3 ICSID will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits. Such requests will be accompanied by an interim statement of account.
- 10.4 Any transfer fees or other bank charges will be charged by ICSID to the deposit.
- 10.5 After the award has been made, the ICSID Secretariat shall render an accounting to the parties of the deposits received and return any unexpended balance to the Parties.

11. Fees and Expenses of the Arbitrators

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.

12. Immunity of the Tribunal

- 12.1 No Member of the Tribunal shall be liable, and the Parties shall not seek to make the Tribunal or any of its Members liable in respect of any act or omission in connection with any matter related to this arbitration.
- 12.2 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 party, witness or participant in any legal or other proceedings arising out of or in connection with the arbitration.

13. Data Protection

- 13.1 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.
- 13.2 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

² As indicated in the Centre's communication of February 27, 2023, "*The Centre [had] already received USD10,000.00 (ten thousand United States dollars) from the Claimants as the prescribed fee for the appointment by the ICSID Secretary-General of the Presiding Arbitrator. Given that the Parties have agreed for ICSID to administer the case, the Centre will apply the USD 10,000.00 (ten thousand United States dollars) as a partial payment of the Claimants' share of this advance payment request.*"

participant and/or to apply to the Tribunal for specific data protection measures to be put in place.

- 13.3 Each of the Parties and their representatives shall indemnify and hold harmless the Tribunal with respect to any breach of applicable data protection and privacy regulations by the Party or its representatives in relation to the arbitration proceedings.

14. Adoption of the Terms of Appointment

- 14.1 These Terms of Appointment, as agreed by the Parties, are adopted by the Tribunal as Annex D to Procedural Order No.1.