

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ruby River Capital LLC

v.

Canada

(ICSID Case No. ARB/23/5)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Ms. Carole Malinvaud, President of the Tribunal

Mr. Barton Legum, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Benjamin Garel

23 August 2023

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Introduction

The first session of the Tribunal was held on 2 August 2023, at 9:30 a.m, by video conference. The session was adjourned at 1:20 p.m..

A 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:

Ms. Carole Malinvaud, President of the Tribunal
Mr. Barton Legum, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

ICSID Secretariat:

Mr. Benjamin Garel, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Christophe Bondy
Mr. Alexandre Genest
Ms. Lindsey Dimond

On behalf of the Respondent:

Mr. Jean-Francois Hébert
Mr. Adam Douglas
Ms. Florence Beaudet
Ms. Elena Lapina
Mr. Alexandre Pépin
Mr. Benjamin Tait
Ms. Julie Boisvert
Ms. Evelyne Bolduc
Mr. Vincent Boulanger
Ms. Graciela Jasa Silveira
Mr. Marc-Antoine Couet
Mr. Louis Philippe Coulombe
Ms. Nathalie Latulippe
Mr. Patrick McSweeney
Mr. William Philippon
Ms. Chloé Jacob
Ms. Magalie Salvas-Groleau
Me. Xavier Moureaux

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 circulated by the Tribunal Secretary on 14 July 2023;
- The parties' comments on the Draft Procedural Order received on 28 July 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree; and
- The additional information provided by the Respondent on 7 August 2023

Having considered the above documents and the parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 1 July 2022, except to the extent that the ICSID Arbitration Rules are modified by the provisions of Section B of Chapter 11 of the North American Free Trade Agreement (NAFTA).
- 1.2. The International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) ("**IBA Rules**") shall guide but not bind the Tribunal with regard to the taking evidence.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rules 21 and 26

- 2.1. The Tribunal was constituted on 22 June 2023 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on 27 March, 4 May and 22 June 2023.

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2.3. 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 the Award, in accordance with ICSID Arbitration Rule 12(1).

2.4. In the event of a vacancy on the Tribunal, ICSID Arbitration Rule 26 shall apply to the exclusion of Rule 26(3)(a). Any portion of a hearing shall be recommenced if, after consulting with the parties, the newly appointed arbitrator considers it necessary to decide a pending matter.

3. Fees and Expenses of Tribunal Members

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 Tribunal Member 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 presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, unless the parties agree otherwise.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27, 35 and 58

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. Orders, decisions and the Award may be made by any appropriate means of communication.

5.3. Orders, decisions and the 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 possible reconsideration of such decision by the full Tribunal.

- 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.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits
Arbitration 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 proceeding 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 as far as possible. If the matter is urgent, the President may fix time limits without consulting the parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Mr. Benjamin Garel, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Benjamin Garel
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U.S.A.
Tel.: + 1 (202) 473-1761
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Paralegal name: Ms. Jaidat Ali Djae

Paralegal email: jalidjae@worldbank.org
ICSID case address: arb/23/5@icsidcases.worldbank.org

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

Mr. Benjamin Garel
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Tel.: +1 (202) 458-1534

8. Representation of the Parties
Arbitration Rule 2

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

For the Claimant

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Ms. Letizia Busso
Ms. Lindsey Dimond
Mr. Alexandre Genest
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8.2. The Tribunal may, after receiving the parties' observations, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new agents, counsel, or advocates from participating in whole or in part in the proceeding.

9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

9.1. The parties shall cover the costs of the proceeding referred to in ICSID Arbitration Rule 50(b) and (c) in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

9.2. Following registration of the Request for arbitration, by letter of 20 March 2023, ICSID requested that the Claimant pay US\$ 150,000 to cover the initial costs of the proceeding through the first session. ICSID acknowledged receipt of the Claimant's payment on 17 April 2023. After the constitution of the Tribunal, by letter of 7 July 2023, ICSID requested that the parties pay US\$ 200,000 to defray the estimated costs of the subsequent phase of the proceeding. ICSID indicated that the preliminary payment made by the Claimant is considered an anticipatory partial payment toward that sum. ICSID acknowledged receipt of the Parties' payments on 3 August (Respondent) and 10 August (Claimant) 2023.

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

10. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 10.1. Absent an agreement of the Parties, Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may decide to hold in-person 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 §20.2.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 11.1. English and French are the procedural languages of the arbitration.

For Documents and Communications

- 11.2. The Tribunal and the Secretariat shall communicate with the parties in or both procedural languages, according to what the context and the urgency of the communication in question requires.
- 11.3. Any document (*e.g.* written requests, applications, pleadings, expert opinions, witness statements, or supporting documents) may be filed in either procedural language without having to be accompanied by a translation into the other procedural language.
- 11.4. Any documents in a language other than the procedural languages 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.
- 11.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a party to provide a certified translation.
- 11.6. Documents exchanged between the parties pursuant to §15 below (Production of Documents) may be produced in the original language and need not be translated.

Hearing

- 11.7. Simultaneous interpretation into both procedural languages will be provided during the hearing.

- 11.8. The testimony of a witness who prefers to give evidence other than in the English and French languages shall be interpreted simultaneously into either procedural language, unless the Tribunal orders interpretation into both procedural languages.
- 11.9. 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.

Tribunal's Documents Except the Award

- 11.10. The Tribunal shall endeavour to issue its orders and decisions in English and in French simultaneously but may, if compliance with a time limit or procedural efficiency requires its orders and decisions in one language and, subsequently in the other. Both language versions shall be equally authentic.

Award

- 11.11. The Tribunal shall render the award in English and French simultaneously. Both language versions shall be equally authentic.
- 11.12. Citations, in the Tribunal's orders and decisions as well as in its award, to any document on the record that exists only in one of the two procedural languages, including to the parties' written pleadings, witness statements, expert reports, hearing transcripts, factual exhibits and legal authorities, may remain in their original language without being translated into the other procedural language.¹

12. Routing of Communications

Arbitration Rule 6

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. 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.

¹ This rule shall also apply to citations in the parties' communications and written pleadings.

12.4. 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.

12.5. The email addresses of the Members of the Tribunal are:

Ms. Carole Malinvaud
Malinvaud@gide.com

Mr. Barton Legum
barton.legum@honletlegum.com

Prof. Zachary Douglas KC
zdouglas@3vb.com

13. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 4, 5 and 9

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

13.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;² and

13.1.2. within three working days following submission by email to the Tribunal Secretary and the opposing party of the documents listed in §13.1.1, upload the pleading with all the supporting documentation (including exhibits and legal authorities) and updated index to the to the folder created for this case on BOX, the file sharing platform used by ICSID.³

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

13.3. 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**.

13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall 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

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

³ Supporting documentation shall be uploaded as individual files, not in .zip format.

statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.⁴

- 13.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.6. A filing shall be deemed timely if sent by a party by midnight, 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.
- 13.7. Extensions may be: (a) agreed between the parties on the basis of professional courtesy, provided that such extensions do not affect the dates fixed for any hearing or meeting; or (b) granted by the Tribunal for justifiable reasons, after appropriate consultation with the parties. A request for an extension shall be submitted as soon as practicable after a party becomes aware of the circumstances which prevent it from complying with the deadline.

14. Number and Sequence of Pleadings – Procedural Calendar *Arbitration Rule 30*

- 14.1. The parties shall submit their written pleadings in accordance with the Procedural Calendar set out in **Annex B** and with the rules set out below. The parties may at any stage of the proceedings seek further directions from the Tribunal regarding procedural steps relating to and/or in addition to those set out in the Procedural Calendar.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36

- 15.1. Each party may request the production of documents from the other party.
- 15.2. Each party will be permitted to file requests in accordance with the procedural timetable set out in **Annex B** to this Order. The requests, responses or objections to a request, the reply to the responses or objections to the requests, and the Tribunal's decisions regarding objected requests shall be made in accordance with the procedural timetable set out in **Annex B** and shall be recorded in a "Stern" schedule in Word and PDF formats in the form of the template provided in **Annex C**.
- 15.3. Requests for the production of documents shall identify in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist; and shall set forth, in respect of

⁴ 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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each document or category of documents requested, a statement as to why such materials are considered relevant to the case and material to its outcome.

- 15.4. The parties shall not copy the Tribunal or the ICSID Secretariat on their correspondence or exchanges of documents in the course of the document production phase.
- 15.5. Unless the requested party objects to production, it shall produce the documents in electronic form (rather than in hard copy).
- 15.6. Documents shall be produced directly to the requesting party via upload to a dedicated folder on an online document sharing platform (BOX or other, to be determined in due course by the parties) to which only the parties shall have access.
- 15.7. Articles 3 and 9 of the IBA Rules shall guide the Tribunal and the parties regarding document production in this case. In particular, and in the spirit of the IBA Rules, the Tribunal will not allow “discovery-style” requests for document production that disregard the relevance and materiality principles of the IBA Rules.
- 15.8. Each disputing party may withhold from production documents that it considers not subject to production based on a legal impediment or privilege, on grounds of commercial or technical confidentiality or on grounds of special political or institutional sensitivity, as set out in Article 9.2b), e) and f) of the IBA Rules. If a party withholds documents on one of these bases, it shall submit to the other party either: (a) a log identifying such documents (or categories of documents) and the grounds for withholding; or (b) redacted versions of such documents identifying the grounds for redacting. Any such withholding or redactions shall be subject to challenge by the other party. The challenge shall as required be submitted for a decision by the Tribunal.
- 15.9. Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a party subsequently submits them to the Tribunal in accordance with the Procedural Calendar.
- 15.10. Documents produced according to the above procedure are assumed to be confidential, and the parties must treat them as such. Such documents that neither party subsequently submits to the Tribunal shall not be published or disclosed by either party to any other party, nor shall they be used for any purpose other than these proceedings.
- 15.11. The Tribunal may also, on its own motion, request the production of documents.
- 15.12. Should a party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced, taking into account all relevant circumstances, after seeking and taking into consideration explanations provided by the parties.

16. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13, above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the other party consents or the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 16.5. Documents shall be submitted in the following form:
 - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits 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 “RL-” for legal exhibits containing authorities etc.
 - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-FRA for a document submitted only in French and C-0001-ENG-FRA for a document submitted simultaneously in English and French. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §16.5.4.
 - 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.

- 16.5.4. Electronic files and the accompanying indexes shall describe the content of the document in their file names and otherwise follow the naming conventions contained in **Annex A**.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. The parties may use demonstrative exhibits (such as PowerPoint slides, graphics, charts, tabulations, etc. compiling information which is on record but not presented in such form) at any hearing, provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not on the record.
- 16.9. An electronic copy of each demonstrative exhibit shall be distributed by the party intending to use it by email sent to the entire case email distribution for each party, the Members of the Tribunals, the Tribunal Secretary, [the Assistant] to the court reporter and to the interpreters as necessary at a time to be decided at the pre-hearing organizational meeting.
- 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

Convention Article 43(a); Arbitration Rule 38

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings. Any person may present evidence as a witness, including a party or a party's officer, employee or other representative.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness or expert and contain the information contemplated by Articles 4.5 and 5.2 of the IBA Rules.

18. Examination of Witnesses and Experts

Arbitration Rule 38

- 18.1. The IBA Rules shall guide the Tribunal and the parties regarding examination of witnesses and experts in this case.
- 18.2. Each witness and expert shall be available for examination at the hearing, subject to the provisions of this Procedural Order.
- 18.3. On the date indicated in Annex B, each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts of the opposing party it wishes to cross-examine at the hearing. A failure by any party to call a witness or expert for cross-examination, or to put questions to a witness or expert on any particular topic, shall not be taken as an admission by that party of the veracity of the evidence of that witness or expert.
- 18.4. Within 48 hours of the notifications mentioned in §18.3, either party may request leave from the Tribunal to present any of its own witnesses or experts for examination at the hearing who have not been called by the other party. Shortly (and in any event no less than 48 hours, and no more than two weeks) after the parties' notifications mentioned in §18.3, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, as well as rule on the parties' requests for leave, if any.
- 18.5. Each party shall be responsible for summoning its own witnesses and experts to the applicable hearing, except when the other party has waived cross-examination of a witness or expert and the Tribunal does not direct his or her appearance. If a witness or expert whose appearance was requested by a party or the Tribunal fails to appear at the hearing without justification, the Tribunal shall disregard the witness statement of such witness or report of such expert, unless, in exceptional circumstances, the Tribunal decides otherwise.
- 18.6. Upon request of either party, the Tribunal shall assist the parties in summoning witnesses that are not in their control.
- 18.7. The Tribunal may, on its own initiative or at the request of a party, summon any other witness to appear.
- 18.8. In principle, only a witness whose statement is in the record and is referred to in at least one of the relevant party's written pleadings, can be cross-examined at the hearing.
- 18.9. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the parties during the pre-hearing organizational meeting.

- 18.10. The procedure for examining witnesses and experts at the hearing shall be the following:
- 18.10.1. Each witness and expert shall be entitled to testify and be cross-examined in the procedural language of his or her choice.
 - 18.10.2. Witnesses giving oral testimony may first be examined in a direct examination, subject to time limits to be established by the Tribunal at the pre-hearing organizational meeting.
 - 18.10.3. In principle, direct examination of a factual witness shall be limited to the content of the witness' statement. Written witness statements are part of their direct testimony and during direct examination, witnesses are invited to confirm their statements. The party that presents the witness can briefly examine the witness to correct or clarify, if necessary, the witness statement or to complete it with respect to facts that occurred, or allegations that were made after the statement has been filed.
 - 18.10.4. Experts giving oral evidence may, in lieu of direct examination, give a brief summary of their report, the duration of which shall be established during the conference on hearing organization prescribed in §19.2.
 - 18.10.5. The direct examination of witnesses and experts is followed by examination by the other party ("**cross-examination**"), on relevant matters that were addressed or presented in the witness statement or during direct examination, or that are demonstrably within the scope of the witness' knowledge, such as – for example – based on documents in the record that the witness authored or received.
 - 18.10.6. The party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination ("**re-direct examination**").
 - 18.10.7. The Tribunal may examine the witness at any time, either before, during or after examination by any of the parties.
 - 18.10.8. Parties are authorized to ask follow-up questions relating to the Tribunal's questions.
- 18.11. Unless the parties agree, or the Tribunal decide, otherwise, witnesses – other than designated party representatives – shall not be present in the hearing room, discuss their testimony with other witnesses, and read the hearing transcripts, before being themselves examined. Experts may attend the hearing at any time.

- 18.12. “Designated party representative” referred to in §18.7 mean the individual designated by a party to act as its agent and give instructions to counsel at the hearing.
- 18.13. If a party designate several representatives which are also witnesses called to testify at the hearing, the parties shall endeavour to agree on the order in which the witnesses shall testify so as to limit the number of representatives of a party at the hearing before he or she has testified orally. In the absence of an agreement, the Tribunal shall rule on the matter.
- 18.14. Upon application made at the latest at the pre-hearing organizational meeting prescribed in §19.2, examination by videoconference may exceptionally be permitted for justified reasons at the discretion of the Tribunal.
- 18.15. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness or expert.
- 18.16. It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

19. Case Management Conferences

Arbitration Rule 31

- 19.1. The Tribunal shall convene case management conferences with the parties in accordance with ICSID Arbitration Rule 31 in order to (i) identify uncontested facts (e.g., joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., through Tribunal questions, decision tree, road map, etc); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., appointment of Tribunal-appointed expert).
- 19.2. A case management conference for hearing organization shall be held at least six weeks before the hearing as scheduled in Annex B. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.3. At a date to be determined by the Tribunal, and in any event no later than the date of the case management conference for hearing organization, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding an indicative daily schedule for the hearing.
- 19.4. As the case may be, the Tribunal may, 14 days in advance of the hearing, indicate in a non-exhaustive manner to the parties topics that it wishes them to address in their oral submissions.

20. Hearings

Arbitration Rule 32

- 20.1. After consultation with the parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
- 20.2. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments. No new evidence may be presented at the hearing except with leave of the Tribunal.
- 20.3. The hearing shall in principle be held in-person or, if public health reasons or other types of reasons do not allow an in-person hearing to be held, 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 §10 above.
- 20.4. The hearing shall take place on the dates set out in Annex B.
- 20.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.6. As a general principle, subject to both the Tribunal's overriding duty to ensure a fair hearing for all parties and all orders of the Tribunal made at any time (including the present Order), the overall time available to the parties at the hearing shall be allocated equally, using an appropriate method of timekeeping.

21. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 21.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 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, if possible, 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 30 days of the later of the dates of the receipt of the sound recordings and final transcripts from the court reporter. 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 Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

22.1. The Tribunal shall, in due course, convey its instructions regarding the parties' cost submissions and, if any, post-hearing briefs.

23. Non-Disputing NAFTA Parties

NAFTA Article 1128, NAFTA Article 1129

23.1. The Governments of Mexico and the United States may make submissions to the Tribunal pursuant to the procedure and requirements set forth in NAFTA Article 1128 and in accordance with the procedural calendar set out in Annex B.

24. Non-Disputing Third Parties

NAFTA Free Trade Commission Statement on Non-Disputing Party Submissions

24.1. Any non-disputing party, other than a NAFTA Party referred to in Article 1128 of the NAFTA, that wishes to file a written statement to the Tribunal shall apply for leave from the Tribunal to file such a submission in accordance with the procedural calendar set out in Annex B. The Tribunal shall consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on Non-Disputing Party Participation, issued on 7 October 2003, and the parties shall have the right to respond to all applications and submissions by non-disputing parties.

25. Transparency matters

Convention Article 48(5), Arbitration Rules 62-66

25.1. The parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

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.

- 26.2. The Members of the Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy laws and 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.

27. Amicable Dispute Settlement

- 27.1. The Tribunal notes that the parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding.

On behalf of the Tribunal,

[SIGNATURE]

Carole Malinvaud
President of the Tribunal
Date: 23 August 2023

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-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</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-FR</i>
	<i>R-0002-ENG</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-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-FR</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i> <i>MJ-0001</i>

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Legal Opinions	<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)-FR</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-FR</i>
	<i>Request for Production of Documents-[Claimant]-ENG</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-ENG</i>
	<i>Costs Submissions-[Respondent]-FR</i>
<i>Observations to Request for [XX]-[Claimant]-ENG</i>	

Annex B – Procedural Timetable

Scenario 1: Request for Bifurcation only

Procedural Step	Party / Tribunal	Days	Date
Procedural Order No. 1	Tribunal		23 August 2023
Memorial	Claimant	90	21 November 2023
Request for Bifurcation	Respondent	45 maximum	TBC
Claimant's Response to the Request for Bifurcation	Claimant	30	TBC
Respondent's Reply to the Claimant's Response	Respondent	20	TBC
Claimant's Rejoinder to the Respondent's Reply	Claimant	20	TBC
Hearing on Bifurcation, if necessary	Parties and Tribunal	If necessary	If necessary
Decision (without reasons) of the Tribunal on the Request for Bifurcation (Reasoned Decision issued later)	Tribunal	Approx. 15	TBC

Scenario 2: No Jurisdictional Objection

	Step	Parties / Tribunal	Days	Date
1.	Procedural Order No. 1	Tribunal		23 August 2023
2.	Memorial	Claimant	90	21 November 2023
3.	Counter-Memorial	Respondent	120 (+ 7 for end-of-year and Easter holidays)	27 March 2024

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	Step	Parties / Tribunal	Days	Date
4.	Parties' respective Documents Production Requests	Parties	21	17 April 2024
5.	Deadline for applications for leave to submit <i>amicus curiae</i> submissions, if any, attaching the proposed submission	Third-parties	n/a	24 April 2024
6.	Objections to Documents Production Requests	Parties	21	8 May 2024
7.	Replies to objections to Documents Production Requests	Parties	14	22 May 2024
8.	Observations on applications for leave to submit <i>amicus curiae</i> submissions	Parties	30 (from step 5)	27 May 2024
9.	Decision on Documents Production Requests	Tribunal	14 (from step 6)	5 June 2024
10.	Decision on applications for leave to submit <i>amicus curiae</i> submissions	Tribunal	21 (from step 8)	17 June 2024
11.	Production of Documents (both non-contested and as ordered by the Tribunal)	Parties	21 (from step 9)	26 June 2024
12.	Reply	Claimant	60 (from step 10)	26 August 2024
13.	Rejoinder	Respondent	90	25 November 2024
14.	NAFTA Article 1128 Submissions by non-disputing NAFTA Parties, if any	Non-disputing NAFTA Parties	n/a	20 December 2024
15.	Disputing Parties' Submissions, if any, on NAFTA Article 1128 Submissions	Parties	30 (from step 13)	20 January 2025
16.	Communication of the lists of witnesses and experts to be cross-examined during the hearing	Parties	At least four weeks before the dates for Hearing	TBC

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	Step	Parties / Tribunal	Days	Date
17	Request for leave to present witnesses/experts not called by the other Party	Parties	Within 48 hours of step 15	TBC
18	Indication of witnesses/experts called by the Tribunal and Tribunal's ruling on Parties' requests for leave to present witnesses/experts not called by the other Party	Tribunal	Within two weeks of step 15	TBC
19	Pre-hearing organizational teleconference/videoconference	All	At least four weeks before the dates for Hearing	TBC
20	Hearing	All	5	Dates to be confirmed in consultation with the Tribunal; target: March/April 2025
21	Post-Hearing Briefs	Parties	TBD	TBC
22	Cost submissions	Parties	TBD	TBC

Calendrier 3: Objections à la compétence SANS demande de bifurcation

	Step	Parties / Tribunal	Days	Date
1.	Procedural Order No. 1	Tribunal		23 August 2023
2.	Memorial	Claimant	90	21 November 2023
3.	Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	120 (+ 7 for end-of-year and Easter holidays)	27 March 2024
4.	Parties' respective Requests to Produce Documents	Parties	21	17 April 2024

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	Step	Parties / Tribunal	Days	Date
5.	Deadline for applications for leave to submit <i>amicus curiae</i> submissions, if any, attaching the proposed submission	Third-parties	n/a	24 April 2024
6.	Objections to Requests	Parties	21	8 May 2024
7.	Replies to objections to Requests	Parties	14	22 May 2024
8.	Observations on applications for leave to submit <i>amicus curiae</i> submissions	Parties	30 (from step 5)	27 May 2024
9.	Decision by the Tribunal on Requests for document production	Tribunal	14 (from step 6)	5 June 2024
10.	Decision on applications for leave to submit <i>amicus curiae</i> submissions	Tribunal	21 (from step 8)	17 June 2024
11.	Production of Documents (both non-contested and as ordered by the Tribunal)	Parties	21 (from step 9)	26 June 2024
12.	Reply on the Merits and Counter-Memorial on Jurisdiction	Claimant	60	26 August 2024
13.	Rejoinder on the Merits and Reply on Jurisdiction	Respondent	90	25 November 2024
14.	Rejoinder on Jurisdiction	Claimant	60	24 January 2025
15.	NAFTA Article 1128 Submissions by non-disputing NAFTA Parties, if any	Non-disputing NAFTA Parties	n/a	24 February 2025
16.	Disputing Parties' Submissions, if any, on NAFTA Article 1128 Submissions	Parties	30 (from step 14)	26 March 2025
17.	List of witnesses and experts to be cross-examined during the hearing	Parties	At least four weeks before the dates for Hearing	TBC
18.	Request for leave to present witnesses/experts not called by the other Party.	Parties	Within 48 hours of step 16	TBC

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	Step	Parties / Tribunal	Days	Date
19	Indication of witnesses/experts called by the Tribunal and Tribunal's ruling on Parties' requests for leave to present witnesses/experts not called by the other Party.	Tribunal	Within two weeks of step 16	TBC
20	Pre-hearing organizational teleconference/videoconference	All	At least four weeks before the dates for Hearing	TBC
21	Hearing	All	5	date to be confirmed in consultation with the Tribunal; target: May/June 2025
22	Post-Hearing Briefs	Parties	TBC	TBC
23	Cost submissions	Parties	TBC	TBC

Annex C – Stern Schedule for Document Production Requests

Document Request Number	1
Identification of documents or category of documents requested	
Relevance and materiality	
Summary of objections by disputing party to production of requested documents	
Reply	
Decision of the Tribunal	