

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Silver Bull Resources, Inc.

v.

United Mexican States

(ICSID Case No. ARB/23/24)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Ian Glick KC, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Prof. Philippe Sands KC, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

26 February 2024

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Introduction

The first session of the Tribunal was held on February 13, 2024, at 3 p.m. London time, by video conference via Zoom. The session was adjourned at 5:15 p.m. London time.

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:

Ian Glick KC, President of the Tribunal
Stephen L. Drymer, Arbitrator
Philippe Sands KC, Arbitrator

ICSID Secretariat:

Francisco Abriani, Secretary of the Tribunal

On behalf of the Claimant:

Tim Foden, Boies Schiller Flexner (UK) LLP
Ben Love, Boies Schiller Flexner LLP
Sagar Gupta, Boies Schiller Flexner (UK) LLP
Lindsay Holcomb, Boies Schiller Flexner LLP

On behalf of the Respondent:

Alan Bonfiglio Ríos, Secretaría de Economía
Rafael Alejandro Augusto Arteaga Farfán, Secretaría de Economía
Pamela Hernández Mendoza, Secretaría de Economía
Erin Mireille Castro Cruz, Secretaría de Economía
Greg Tereposky, Tereposky & DeRose LLP
Alejandro Barragan, Tereposky & DeRose LLP
Jennifer Radford, Tereposky & DeRose LLP
Ximena Iturriaga, Tereposky & DeRose LLP
Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP

The Tribunal and the parties considered the following:

- The Draft Procedural Order No. 1 circulated by the Tribunal Secretary on January 17, 2024; and
- The parties' comments on the Draft Procedural Order received on February 6, 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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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** (the "Procedural Timetable").

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 July 1, 2022, except to the extent that they are modified by Section B, Chapter 11 of the NAFTA.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on January 5, 2024 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 October 6, 2023, November 2, 2023 and January 5, 2024.

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).

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 participation of a majority of the members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the parties agree otherwise. The Tribunal will endeavor to ensure that all of its members participate in all its sittings, save in exceptional circumstances.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

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 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. The certified copy of the Award will be sent via *courier* to the address designated by each party.

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.
- 6.3. Short extensions of time may be agreed between the parties as long as: (i) they do not materially affect the overall schedule of the procedure as set out in the Procedural Timetable; (ii) they are made before the time period in question has expired; and (iii) the Tribunal is immediately informed

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Celeste Salinas Quero, 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:

Celeste Salinas Quero
ICSID
MSN C3-316
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-5398
Fax: + 1 (202) 522-2615
Email: csalinasquero@worldbank.org
Paralegal name: Ana Cecilia Chamorro
Paralegal email: achamorro@worldbank.org
ICSID case address: arb/23/24@icsidcases.worldbank.org

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

Celeste Salinas Quero
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Washington, D.C. 20036
U.S.A.
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.

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8.2. Upon execution of this Procedural Order, any intended change or addition to the list of legal representatives shall be notified promptly in writing to the other Party, the Tribunal, and the Secretary of the Tribunal. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest (which has not been, or cannot be, waived) with one or more members of the Tribunal.

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 direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

9.2. Following registration of the Request for arbitration, by letter of July 27, 2023, ICSID requested that the Claimant pay US\$150,000. ICSID received the Claimant's payment on September 8, 2024. Upon the constitution of the Tribunal, by letter of January 12, 2024, ICSID requested that the Respondent pay US\$150,000. At the date of this Procedural Order, ICSID had not received the Respondent's payment.

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. Washington, D.C., shall be the place of the proceeding.

10.2. The Tribunal may 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.

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- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.
- 10.4. The Award shall be deemed to be made at the place of the arbitration, regardless of where it is signed.

11. Procedural Languages, Translation and Interpretation
Administrative and Financial Regulation 32; Arbitration Rule 7

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

[For Documents and Communications]

- 11.2. The Tribunal and the Secretariat may communicate in either procedural language.
- 11.3. Any written requests or applications from the parties may be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 3 days.
- 11.4. Pleadings, expert opinions, witness statements, and any other supporting documents shall be filed in either procedural language, provided that a translation of such document to the other procedural language is filed within 15 days.
- 11.5. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal requires a fuller or a complete translation.
- 11.6. Translations need not be certified, unless the translation is disputed and the Tribunal orders a party to provide a certified translation.
- 11.7. Documents exchanged between the parties pursuant to §15 below (Production of Documents) may be produced in the original language and need not be translated by the party producing them.
- 11.8. The original language of any submitted document shall prevail over the translation and if needed a corrected courtesy translation may be filed.

[For Hearing]

- 11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.10. The hearing will be conducted in Spanish and English with simultaneous interpretation from and into each procedural language.

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11.11. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English and Spanish languages shall be interpreted simultaneously into English and Spanish.

11.12. 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.

[For Tribunal's Documents Except the Award]

11.13. The Tribunal may make any order or decision in either procedural language and subsequently shall issue that order or decision in the other procedural language. Both versions of the order or decision shall be equally authentic.

[For Tribunal's Award]

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

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.

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. In accordance with established practice, the parties and their representatives shall not engage in any oral or written communications with any Member of the Tribunal *ex parte* about this arbitration.

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;¹ and
- 13.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.²
- 13.2. The filing process indicated under §13.1.1 and §13.1.2 shall apply both to the original language submission and to any subsequent translations submitted pursuant to §11.
- 13.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and editable (i.e., OCR PDF or Word).
- 13.4. 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**.
- 13.5. At the conclusion of the written phase of the proceeding, two weeks after the last written submission is filed, the parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated index of all documents.
- 13.6. Also at the conclusion of the written phase, the same electronic copy of the entire file shall be sent to Mr. Glick and Mr. Drymer in a USB drive, to the addresses to be communicated to the Parties by the Tribunal. In addition, the parties shall send to the President of the Tribunal hard copies of the documentary evidence arranged in chronological order.
- 13.7. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.8. 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.

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

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

14. Number and Sequence of Pleadings – Procedural Calendar

Arbitration Rule 30

- 14.1. The arbitration shall proceed in accordance with the Procedural Timetable, except if the Tribunal, upon a showing of good cause by either party or on its own initiative, or by mutual agreement of the parties, decides to amend the timetable.
- 14.2. Any written submission shall be submitted in accordance with ICSID Arbitration Rule 30.
- 14.3. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other party.
- 14.4. In their second exchange of submissions (in principle Reply and Rejoinder), if any, the parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing party's last submission.
- 14.5. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 14.6. The parties shall include in their submissions a list of abbreviations. Each party shall strive to use the same abbreviations as the other party and the parties shall update their list of abbreviations in subsequent submissions.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 15.1. The Tribunal shall be guided by Articles 3 and 9 of the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 15.2. Within the time limit set in the Procedural Timetable, each party may request from the other party the production of documents or categories of documents within the other party's possession, custody or control. Such a request for production shall identify each document or narrow category of documents sought with precision, in the form of a Redfern Schedule as stipulated by the Tribunal pursuant to the model

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appended to this Procedural Order as **Annex C**, in both Word and .pdf format, specifying why the document sought is relevant to the dispute and material to the outcome of the case. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.

- 15.3. Within the time limit set forth in the Procedural Timetable, the other party shall either produce the requested documents or, using the Redfern Schedule provided by the first party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 15.4. Within the time limit set forth in the Procedural Timetable, the requesting party may seek an order for the production of the documents requested sought and not produced, in which case it shall reply to the other party's objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
- 15.5. The parties shall make no submissions in respect of the steps set out in §§ 15.2 and 15.4 above other than those incorporated in the Redfern Schedules.
- 15.6. On or around the date set forth in the Procedural Timetable, the Arbitral Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof.
- 15.7. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting party without copying the Arbitral Tribunal. Documents so communicated shall not be considered to be on record unless and until a party subsequently files them as exhibits in accordance with §16 below.
- 15.8. In addition, the Arbitral Tribunal may order a party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other party and to the Arbitral Tribunal in accordance with §16 below and shall be considered to be on record.
- 15.9. If a party fails to produce documents ordered by the Tribunal, the Tribunal may deem, in light of all circumstances including the reasons advanced by a party to explain its inability to produce any given document, that the document is adverse to the interests of that party.

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

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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 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-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted in English and Spanish. 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 follow the naming conventions contained in **Annex A**.

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- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party within 42 days of receipt, 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 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 Tribunals, the Tribunal Secretary, to the court reporter and to the interpreters at least 1 hour prior to their use, with the exception of those demonstrative exhibits and slides and to be used by experts which can be distributed up to 30 minutes prior to their use.
 - 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. The witness statements and expert reports shall be numbered independently from other documents and properly identified. If a party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second".
 - 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. Any person may present evidence as a witness, including a party or a party's officer, employee, or other representative.
 - 17.4. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal.

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- 17.5. Each witness statement shall state the witness's name, date of birth, and involvement in the case and include all the information contemplated in Article 4(5) of the IBA Rules on Taking of Evidence in International Arbitration 2020.
- 17.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 17.7. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in § 11 above.
- 17.8. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 17.9. Expert reports shall include a statement of independence and disclose any relationship with members of the Tribunal or the Parties and such other information as contemplated in Article 5(2) of the IBA Rules on Taking of Evidence in International Arbitration 2020.

18. Examination of Witnesses and Experts

Arbitration Rule 38

- 18.1. On the date provided in the Procedural Timetable, each party shall identify the witnesses and experts of its opponent whom it intends to cross-examine.
- 18.2. Each party shall be responsible for summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.3. Each party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.
- 18.4. The Tribunal may call either party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.
- 18.5. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.

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- 18.6. The Tribunal may allow a witness to be examined by videoconference (in the context of an online hearing or otherwise) and will issue appropriate directions.
- 18.7. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 18.8. The Tribunal shall not consider the expert evidence of an expert witness who fails to appear when summoned to a hearing, unless exceptional circumstances warrant his/her non-appearance (e.g., circumstances beyond the expert's control or the control of the party presenting the expert).
- 18.9. At the hearing, the examination of each witness shall proceed as follows:
 - 18.9.1. The party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after the last opportunity for the party who presented the witness to file witness statements (direct examination). In principle, direct examination shall not exceed 10 minutes;
 - 18.9.2. In lieu of direct examination, any expert giving oral evidence may give a presentation summarizing her or his expert report(s) not exceeding 30 minutes;
 - 18.9.3. The other party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement;
 - 18.9.4. The party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination (if it so chooses);
 - 18.9.5. Re-cross examination may exceptionally be allowed in the Tribunal's discretion;
 - 18.9.6. The Tribunal may ask its questions at any time, likely mainly at the end of the examination.
- 18.10. Subject to other arrangements during the pre-hearing telephone conference, fact witnesses shall be examined prior to expert witnesses, the Claimants' fact (and expert) witnesses being examined prior to the Respondent's fact (and expert)

witnesses and each party determining the order of the fact witnesses whom it presents.

18.11. Subject to a different agreement by the parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions.

18.12. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

18.12.1. Limit or refuse the right of a party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or

18.12.2. Direct that a witness be recalled for further examination at any time.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 31

19.1. A pre-hearing organizational meeting shall be held at a date to be determined by the Tribunal after consultation with the parties. The pre-hearing organizational meeting shall be held no later than four weeks before the start of the hearing. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Case Management Conferences

Arbitration Rule 31

The Tribunal may convene case management conferences with the parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence).

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing 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 §10 above.
- 21.3. Having due regard to the views of the parties and the specific circumstances of the case, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 21.4. The hearing shall take place on the dates set in the Procedural Timetable.
- 21.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.6. Allocation of time and other procedural issues related to the hearing will be discussed by the parties and the Tribunal during the pre-hearing conference call.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the parties and the Tribunal Members.
- 22.2. 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 and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 22.3. 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.

23. Post-Hearing Matters and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. In consultation with the parties, the Tribunal will determine during the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for preparing, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave from or on request of the Tribunal.
- 23.2. The Tribunal will issue directions on the parties' statements of costs at the end of the hearing.

24. Transparency matters

Convention Article 48(5), Arbitration Rules 62-66, , FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents

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

25. Data Privacy and Cybersecurity

- 25.1. 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.
- 25.2. The Members of the Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 25.3. 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.

26. Amicable Dispute Settlement

- 26.1. 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. If the parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2). Any agreement pursuant to ICSID Arbitration Rule

54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

27. Non-Disputing NAFTA Parties

NAFTA Articles 1127, 1128 and 1129

- 27.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in the Procedural Timetable.
- 27.2. 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 confidentially 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.
- 27.3. The Disputing Parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in Procedural Timetable.

28. Amicus Curiae Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; Arbitration Rule 67

- 28.1. If a request for the submission of an amicus curiae brief is filed by the date indicated in Annex B, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 67 and take into consideration the recommendation of the North American Free Trade Commission on Non-Disputing Party participation of 7 October 2003.
- 28.2. By the relevant dates indicated in Annex B, 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.
- 28.3. 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.

On behalf of the Tribunal,

[Signed]

Ian Glick KC
President of the Tribunal
Date: 26 February 2024

Annex A – Electronic File Naming Guidelines

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

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

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-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-SPA</i>
	Legal Authorities
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-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<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/EXPERT INITIALS-###

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Procedural Order No. 1 – Annex A

Witness Statements, Expert Reports, Legal Opinions	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Procedural Timetable

Procedural Step	By	Time Interval from previous step	Date
First Session	All		February 13, 2024
Memorial	Claimant	125 days from the First Session	June 17, 2024
Counter-Memorial	Respondent	125 days from the Memorial	October 21, 2024
Simultaneous exchange of document production requests	Parties	21 days from the Counter-Memorial	November 11, 2024
Simultaneous production of requested documents and objections to document production requests, where contested	Parties	21 days from the simultaneous exchange of the document production requests	December 12, 2024
Responses to objections to document production requests and applications to Tribunal regarding document production	Parties	7 days from the simultaneous production of requested documents and objections to document production requests, where contested	December 19, 2024
Decision on applications for document production	Tribunal	14 days from the responses to objections to document production	January 2, 2025
Production of documents ordered by the Tribunal	Parties	14 days from the Decision on applications for document production	January 16, 2024
Reply	Claimant	120 days from the Counter-Memorial	February 18, 2025
Rejoinder	Respondent	120 days from the Statement of Reply	June 18, 2025
Applications for leave to file non-disputing party (amicus) submissions, if any	TBD	15 days for the Rejoinder	July 3, 2025
Submissions under NAFTA Article 1128, if any	TBD	15 days from the Rejoinder	July 3, 2025
Comments on applications for leave to file non-disputing party (amicus) submissions, if any	Both Parties	15 days from deadline for applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	July 18, 2025
Comments on NAFTA Article 1128 submissions	Both Parties	15 days from the comments on applications for leave to file	July 18, 2025

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Procedural Order No. 1 – Annex B

		non-disputing party submissions, if any.	
Decision on applications for leave to file non-disputing party (amicus) submissions, if any	Tribunal	15 days from comments on applications for leave to file non-disputing party (amicus) submissions	August 4, 2025
Claimant's and Respondent's comments on non-disputing party (amicus) submissions	Claimants and Respondent	15 days from the Decision on applications for leave to file non-disputing party (amicus) submissions, if any	August 19, 2025
Notification of witnesses and experts for examination at the hearing	Parties	14 days from Comments on NAFTA Article 1128 submissions	August 4, 2025
Pre-Hearing Organizational Meeting	All		TBD
Hearing	All		October 6-10, 2025, Washington D.C.
Post-Hearing Submissions	Parties	TBD	TBD, if directed by the Tribunal
Costs Submissions	Parties	TBD	TBD

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			