

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**

- and -

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

- between -

Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos Williamson-Nasi in his own right and on behalf of Axis Services, Axis Holding, Clue and F. 305952; Carolyn Grace Baring; Diana Grace Beard; Floradale Partners, LLC; Frederick Grace; Frederick J. Warren; Frederick J. Warren IRA; Gary Olson; Genevieve T. Irwin; Genevieve T. Irwin 2002 Trust; Gerald L. Parsky; Gerald L. Parsky IRA; John N. Irwin III; José Antonio Cañedo-White in his own right and on behalf of Axis Services, Axis Holding and F. 305952; Nicholas Grace; Oliver Grace III; ON5 Investments, LLC; Rainbow Fund, L.P.; Robert M. Witt; Robert M. Witt IRA; Vista Pros, LLC; Virginia Grace

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/18/4

**PROCEDURAL ORDER No. 5
ON THE PROCEDURAL CALENDAR**

Tribunal

Prof. Diego P. Fernández Arroyo, President
Mr. Andrés Jana Linetzky, Arbitrator
Mr. Gabriel Bottini, Arbitrator

Secretary of the Tribunal

Ms. Celeste E. Salinas Quero

August 7, 2019

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I. Procedural background

1. On July 19, 2019, Claimants requested an extension of the deadlines for the submission of the Statement of Claim and Statement of Defense (the “**Request for an extended briefing schedule**”).
2. On July 21, 2019, Claimants filed an Application for Interim Measures, including appendices, witness statements and exhibits (the “**Application**”).
3. On July 22, 2019, Claimants requested an expedited briefing schedule for the Application (the “**Request for an expedited briefing**”).
4. On July 22, 2019, the Tribunal invited Respondent to submit comments on Claimants’ Requests.
5. On July 29, 2019, Respondent submitted, among others, its comments on Claimant’s Request for an extended briefing schedule of July 19 and Claimant’s Request for an expedited briefing of July 22, 2019, including exhibits and one annex (the “**Respondent’s Comments**”).

II. The Parties’ positions

A. *Request for an extended briefing schedule*

a. *Claimants’ position*

6. Claimants proposed that the Statement of Claim be submitted on October 7, 2019 and the Statement of Defense on April 20, 2020. Claimants stated, *inter alia*, that “[w]e are in the process of obtaining permission from a U.S. court to use evidence we have obtained that we plan to include with our Statement of Claim.”¹
7. Claimants maintain that such eight-week extension would not unduly burden Respondent, since the extension would be reciprocal and the time period for Respondent’s response has not begun.

¹ Request for an extended briefing schedule, p. 1.

8. Further, Claimants noted that with the requested extension the earliest the hearing could be held would be the week of April 26, 2021. Claimants further observed they would also be available during the week of May 3, 2021.²

b. Respondent's position

9. Respondent maintained that, with their Application, Claimants seek to modify their Notice of Arbitration. If the Tribunal was minded to admit the Application, Claimants would have to incorporate the facts and legal basis for their arguments into the Statement of Claim.³
10. Respondent argued, *inter alia*, that it has the right to know and respond to all claims made against it and has the right to make document production requests and make jurisdictional objections and defenses on the merits.⁴ Respondent also argued that Claimants' claims about alleged violations of the NAFTA cannot be resolved by means of an application for interim measures.⁵
11. Respondent argued that it would have to deal with a new and considerable array of topics related to Claimants' claims and with a limited access to the files of the New York court proceedings. Respondent proposed that the Statement of Claim be submitted on September 23, 2019 and the Statement of Defense on April 20, 2020. Respondent appended a proposed amended procedural calendar.⁶

B. Request for an expedited briefing

a. Claimants' position

12. Claimants proposed an expedited briefing of two weeks for Respondent's Response on the Application, one week for Claimants' Reply and one week for Respondent's Surreply.⁷
13. Claimants also requested that a telephonic hearing be held promptly after the completion of the expedited briefing.⁸
14. Further, Claimants maintained their Request for an extended briefing schedule of the Statement of Claim and Statement of Defense. Claimants proposed "to have the briefing

² Request for an extended briefing schedule, p.1.

³ Respondent's Comments, ¶ 15.

⁴ Respondent's Comments, ¶ 16.

⁵ Respondent's Comments, ¶¶ 16, 17.

⁶ Respondent's Comments, ¶ 21.

⁷ Request for an expedited briefing, p. 1.

⁸ Request for an expedited briefing, p. 1.

schedules for the Application and the merits memorials run concurrently, and [that] the eight-week extension requested for both sides to file their respective memorials on the merits should be adequate to accommodate the schedule of the U.S. court and the additional work involved in briefing and arguing the Application.”⁹

b. Respondent’s position

15. Respondent noted, *inter alia*, that Claimants’s Application contained several allegations and that Claimants have had one year, since July 2018, to prepare their Application. Besides, Respondent would need to confer and coordinate with other State authorities and noted that the *Secretaría de Economía* does not have the faculty to enforce interim measures.¹⁰
16. Respondent stated that it would require at least six weeks to prepare a Response on the Application and does not consider necessary to have two rounds of submissions. Further, if a second round of submissions were allowed, Respondent would need two weeks to prepare its Surreply, assuming that Claimant’s Reply would not refer to new facts nor seek to obtain a decision on the merits of the dispute.¹¹
17. Finally, Respondent stated that, while it could try to make itself available for a telephonic hearing, it did not consider one to be necessary.¹²

III. The Tribunal’s analysis

A. Request for an extended briefing schedule

18. The Tribunal has considered the Parties’ positions summarized above. The Tribunal notes that, while Respondent proposes different time limits for the submission of the Statement of Claim and Statement of Defense, it does not oppose to extending the time limits set out in the procedural calendar.
19. The Tribunal considers that an extension of the time limits for the submission of the Statement of Claim and Statement of Defense, if any, should be the same for each Party.
20. Further, Respondent views the Application as an unauthorized attempt to amend the Notice of Arbitration. In this regard, the Tribunal considers that Claimants should abstain from

⁹ Request for an expedited briefing, p. 1.

¹⁰ Respondent’s Comments, ¶¶ 24, 26.

¹¹ Respondent’s Comments, ¶¶ 24, 27, fn. 12.

¹² Respondent’s Comments, ¶ 27.

making any new submissions in this regard and refer to facts and invoke legal arguments at the time of the submission of their Statement of Claim.

B. Request for an expedited briefing and hearing

21. The Tribunal notes that the Application is relatively extensive, with several exhibits, witness statements and annexes appended thereto. The facts described, and the arguments raised in the Application are numerous, possibly requiring action by Respondent and coordination with other authorities beyond the *Secretaría de Economía*.
22. The Tribunal also considers that at this juncture one round of submissions on the Application is enough.
23. Regarding the telephonic hearing, the Tribunal would convene such hearing only if deemed appropriate for a fuller understanding of the factors necessary to decide on the Application.
24. In any event, the Tribunal will make its decision on the Application based on the law applicable to this arbitration and observing the scope of its jurisdiction.

IV. Order

25. On the basis of the foregoing considerations, the Tribunal:
 - a) Extends the time limit for the submission of the Statement of Claim and Statement of Defense, resulting **in 28 weeks for each Party**. Thus, the Statement of Claim shall be submitted on **October 7, 2019** and the Statement of Defense shall be submitted on **April 20, 2020**. Appended to this Order is an updated procedural calendar, Annex A, which replaces Annex A of Procedural Order No. 1.
 - b) Respondent is invited to submit a Response on the Application by **September 18, 2019**. At this juncture, the Tribunal does not expect to request further submissions from the Parties on the Application.
 - c) The Tribunal will convene a telephonic hearing if deemed appropriate. Any further instructions on this point will be communicated to the Parties after the completion of the briefing of the Application.

On behalf of the Tribunal,

[Signed]

Prof. Diego P. Fernández Arroyo

Presiding Arbitrator

Date: August 7, 2019

ANNEX A

Procedural Timetable

Pleading	Time limit	Due Date
Statement of Claim (Claimants)	28 weeks from the issuance of PO 1	Monday, October 7, 2019
Statement of Defense (Respondent)	28 weeks from the due date of the Statement of Claim	Monday, April 20, 2020
Requests for Production of Documents (Claimants and Respondent)	4 weeks from the due date of the Statement of Defense	Monday, May 18, 2020
Production of non-objected documents and Objections to Requests for Production of Documents (if any) (Claimants and Respondent)	3 weeks from the due date of the Requests for Production of Documents	Monday, June 8, 2020
Reply to Objections to Requests for Production (Claimants and Respondent)	2 weeks from the due date of Production of non-objected documents and Objections to Requests for Production of Documents	Monday, June 22, 2020
Decision on Requests for Production of Documents (Tribunal)	3 weeks from the due date of Reply to Objections to Requests for Production	Monday, July 13, 2020
Simultaneous Production of Documents Ordered by the Tribunal (Claimants and Respondent)	3 weeks from the due date of Decision on Requests for Production of Documents	Monday, August 3, 2020
Reply (Claimants)	10 weeks from the production of documents ordered by the Tribunal	Monday, October 12, 2020
Rejoinder (Respondent)	10 weeks from the submission of the Reply	Monday, December 21, 2020

Pleading	Time limit	Due Date
1128 Submissions (Non-disputing NAFTA parties)	2 weeks from the submission of the Rejoinder	Monday, January 4, 2021
Comments to 1128 Submissions (Claimants and Respondent)	2 weeks from the submission of the 1128 Submission	Monday, January 18, 2021
Witness Notifications (Claimants and Respondent)	4 weeks from the due date of the Comments to 1128 Submissions	Monday, February 15, 2021
Pre-Hearing Organizational Meeting (if necessary) (Tribunal, Claimants, Respondent)	Within 3 weeks from the due date of Witness Notifications	
Hearing on the Merits (Tribunal, Claimants, Respondent)	At least 6 weeks from the date of the Pre-Hearing Organizational Meeting	TBD
Tribunal's Decision	TBD	