

IN THE MATTER OF THE ARBITRATION PROCEEDINGS PURSUANT TO NAFTA
CHAPTER 11 AND THE UNCITRAL RULES

BETWEEN

GAMI INVESTMENTS INC.

Claimant

AND

THE GOVERNMENT THE UNITED MEXICAN STATES

Respondent

Procedural Order No.1

With Addendum and Amendments

31 January 2003

1. CONSTITUTION OF THE TRIBUNAL

- 1.1 The following Arbitral Tribunal has been validly appointed to deal with the claim allegedly arising under the North American Free Trade Agreement (*NAFTA*) and notified by the Claimant's letters to the Respondent dated 1 October 2001 and 9 April 2002:

Prof. W. Michael Reisman
Myres S. McDougal Professor of International Law
Yale Law School
127 Wall Street
Room 322
New Haven, CT 06511-6636
USA

Fax: +1 203 432 7247
Tel: +1 203 432 4962

Mr Julio Lacarte Muró
Calle Marcos Bruto 1005
Montevideo
Uruguay

Tel/Fax: +5982 622 3093

Jan Paulsson (President)
Freshfields Bruckhaus Deringer
69 boulevard Haussmann
75008 Paris
France

Fax: +33 1 44 56 44 00/01/02
Tel: +33 1 44 56 44 56

- 1.2 Each arbitrator is and shall remain impartial and independent of the Parties.

2. RULES OF PROCEDURE

- 2.1 The Arbitration Rules of the United Nations Commission on International Trade Law (the *UNCITRAL Rules*) shall govern the arbitration except to the extent modified by section B of chapter XI of NAFTA. Subject to the UNCITRAL Rules and the NAFTA, the Arbitral Tribunal shall conduct the arbitration in such manner as it considers appropriate.

3. REPRESENTATION OF THE PARTIES

- 3.1 GAMI Investments Inc.

GAMI is represented in this procedure by Guillermo Aguilar Alvarez and Lucía Ojeda of SAI Abogados and Charles E. Roh, Jr. and Adam P. Stochak of Weil, Gotshal & Manges, LLP. Unless otherwise instructed, any and all communications sent to GAMI shall be directed to both of the following addresses:

Guillermo Aguilar Alvarez
SAI Abogados
LLP Edificio Plaza Reforma
Prol. Paseo de la Reforma
#600 – 103
Mexico, D.F. 01210

Tel: (52-55) 5259-6618
Fax: (52-55) 5259-3928

Charles E. Roh, Jr.
Weil, Gotshal & Manges
1501 K Street, NW
Suite 100
Washington, DC 20005
USA

Tel: (202) 682-7100
Fax: (202) 857-0940

3.2 The Government of the United Mexican States

The Government of the United Mexican States is represented in this procedure by Hugo Perezcano Díaz, *Director General de Consultoría Jurídica de Negociaciones* of the *Secretaría de Economía*, who hereby authorizes the following people to act in connection with this procedure: Luis Alberto González García, *Director de Consultoría Jurídica de Negociaciones* of the *Secretaría de Economía*; Stephan E. Becker and Sanjay Mullick, external counsel of the *Secretaría de Economía* from the firm Shaw Pittman of Washington DC, USA; and Cameron Mowatt, external counsel of the Ministry of Trade and Commerce from the firm Thomas & Partners of Vancouver BC, Canada. In due time, Mexico will notify the Arbitral Tribunal and Claimant of any other persons authorized to act in its name.

Unless otherwise instructed, any and all communications sent to the Respondent shall be directed to Hugo Perezcano Díaz to the following address:

Dirección General de Consultoría Jurídica de Negociaciones
Subsecretaría de Negociaciones Comerciales Internacionales
Secretaría de Economía
Alfonso Reyes No. 30, Piso 17
Colonia Condesa
México, DF CP 06140
México

Tels. (52-55) 5729-9134 or 73
Fax: (52-55) 5729-9310

4. ADMINISTRATIVE SECRETARY OF THE ARBITRAL TRIBUNAL

4.1 Mr. Zachary Douglas, an associate lawyer in the offices of the Chairman of the Arbitral Tribunal, shall be the Secretary of the Arbitral Tribunal. The functions of Mr. Douglas shall be strictly administrative.

5. TIMETABLE FOR THE PROCEEDINGS

5.1 The timetable for the proceedings shall be as follows:

(a) 10 February 2003

The Claimant shall file its Statement of Claim, together with witness statements, expert reports and such other documentary evidence that it relies upon.

(b) 10 March 2003

The Respondent shall file: (i) comments on whether the proceeding should be separated into different phases (bifurcation); and (ii) notification of any objections to jurisdiction and admissibility.

(c) 8 April 2003

The Respondent shall file its definitive submissions on its objections (if any) to jurisdiction and admissibility.

(d) 8 May 2003

The Claimant shall file its submissions in reply to the Respondent's objections (if any) to jurisdiction and admissibility and shall reply to the Respondent's comments on bifurcation.

(e) 22 May 2003

The Arbitral Tribunal shall decide whether the Respondent's objections to jurisdiction and/or admissibility will be resolved separately as preliminary matters or be joined to the merits. If the former, the deadlines which follow shall be vacated.

(f) 9 June 2003

The Respondent shall file its Statement of Defence together with witness statements, expert reports and such other documentary evidence that it relies upon.

(g) 8 July 2003

The Claimant shall file its Reply to the Respondent's Statement of Defence together with any responsive witness statements, expert reports and documentary evidence.

(h) 8 August 2003

The Respondent shall file its Rejoinder to the Claimant's Reply together with any responsive witness statements, expert reports and documentary evidence.

5.2 At the latest following the conclusion of the written submissions referred to above, the Arbitral Tribunal shall fix dates for a status conference call with respect to the hearing and the possible exchange of post-hearing written submissions, as well as possible submissions by other NAFTA Parties.

- 5.3 The written submissions referred to in § 5.1 shall contain a statement of the relevant facts and an analysis of the facts in the light of the applicable law.
- 5.4 All submissions shall be delivered to the other Party in duplicate with a copy to each member of the Arbitral Tribunal and to the Secretary of the Tribunal.
- 5.5 The text of any submission shall also be supplied in Microsoft Word 6 or 7 to the Arbitral Tribunal and to the other Party on diskette or by e-mail.

6. NOTIFICATIONS AND COMMUNICATIONS

- 6.1 The Parties shall not engage in oral or written communications with any member of the Arbitral Tribunal *ex parte* in connection with the subject-matter of the arbitration.
- 6.2 The Parties shall send copies of correspondence between them to the Arbitral Tribunal only if it pertains to a matter in which the Arbitral Tribunal is required to take some action, or be apprised of some relevant event.
- 6.3 Notifications and communications sent by facsimile need not be confirmed by a hard copy, unless an addressee so requests in respect of a specific notification or communication.
- 6.4 Written submissions are due on the date set by the Arbitral Tribunal, except where that due date does not fall on a business day in which case the submission will be due the following business day.
- 6.5 Extensions of time may, upon the application of a Party before the expiry of a time limit or on the Arbitral Tribunal's own motion, be granted by the Arbitral Tribunal.
- 6.6 Service on the dates specified shall be by hand delivery or delivery to overnight courier service for next day delivery.

7. DOCUMENTARY EVIDENCE

- 7.1 Documentary evidence of a Party that is not filed by the dates set out in § 5.1 above shall not be admissible absent a showing of reasonable cause for the omission, as determined by the Arbitral Tribunal, or unless produced pursuant to a request of the other Party or upon order of the Arbitral Tribunal.
- 7.2 Copies of documents shall have the same evidentiary weight as originals, unless a Party promptly challenges their authenticity.
- 7.3 Voluminous or technical documentary evidence can be submitted in the form of a summary of documents, containing lists or categories of documents, without prejudice to the right of a Party or the Arbitral Tribunal to request the production of any document so listed or categorized.
- 7.4 Voluminous or technical documentary evidence may also be analyzed and presented in the form of reports by qualified persons, without prejudice to the right of a Party or the Arbitral Tribunal to request the production of any document on which any such report is based.

- 7.5 The exhibits containing documentary evidence shall be numbered consecutively throughout these proceedings. The number of each exhibit containing a document produced by the Claimant shall be preceded by the letter “C”. The number of each exhibit containing a document produced by the Respondent shall be preceded by the letter “R”.
- 7.6 A Party may request the other Party to provide relevant information or documents under its possession, custody or control. Where such information or documents is not provided, or where the Arbitral Tribunal on its own motion seeks information, the Arbitral Tribunal may order a Party to produce a document or category of documents relevant to the dispute, provided that such document or category of documents is identified with reasonable particularity and provided further that such document is in the Party’s possession, custody or control. On request by one of the Parties, the Arbitral Tribunal may enter such determinations on the production of evidence as it deems appropriate.
- 7.7 In the first instance, requests for documents should not be copied to the Arbitral Tribunal; nor should the responding Party furnish copies of documents to the Arbitral Tribunal. Documents produced pursuant to such requests shall be communicated to the Arbitral Tribunal only if a Party wishes to rely on them. It shall be the responsibility of each Party to make its requests as early as possible in the circumstances, so that the Claimant puts itself in a position to be able to rely on any documents produced by the Respondent no later than in its Reply; and so that the same will be true for the Respondent in its Rejoinder. The Arbitral Tribunal appreciates that the Respondent may feel it requires the Claimant to provide some immediate information in order to prepare its earlier Statement of Defence; to achieve that objective, the Respondent should apply itself to envisaging any relevant requests as soon as it receives the Statement of Claim, and this irrespective of its position with respect to jurisdiction, admissibility, or bifurcation. This will not prejudice the Respondent’s opportunity to make further reasonable requests beyond the date of its Statement of Defence.
- 7.8 The use of demonstrative exhibits (such as charts or tabulations) shall be permitted at the hearing, provided that no new evidence is contained therein. A hard copy of any such exhibit shall be provided by the Party producing the exhibit to the other Party and to each member of the Arbitral Tribunal.

8. EVIDENCE OF WITNESSES AND EXPERTS

- 8.1 Each witness statement and expert report shall be in the form of a sworn declaration or a declaration under oath or on affirmation.
- 8.2 Each witness statement and expert report shall:
- (a) Set out the name and address of the witness, his or her relation to any of the Parties, if any, and a description of his or her qualifications regarding the matter concerning which the witness will testify;
 - (b) State whether the witness is a witness of fact or an expert witness;

- (c) Expert witnesses shall set out the factual basis or assumptions on which they arrive at their opinion;
 - (d) Contain the evidence that the Party presents of that witness in the form of a narrative; and
 - (e) Be signed by the witness, with an indication of the date and place of signature.
- 8.3 Witness statements and expert reports shall be in sufficient detail so as to suffice in lieu of direct examination of a witness at the hearing.
- 8.4 No later than 45 days prior to the hearing, each Party shall provide the opposing Party, or report a copy to the Arbitral Tribunal, the names of any witnesses whose statement has been submitted by the opposing Party with the request that they be available for cross-examination at the hearing. In the case of a witness not made available for good cause, the Arbitral Tribunal shall have full discretion to assign such weight and materiality to the written testimony of such witness.
- 8.5 In making its rulings, the Arbitral Tribunal may be guided by Article 4.10 of the IBA Rules on the Taking of Evidence in International Commercial Arbitration when a Party seeks the testimony of witnesses controlled by the opposing Party.
- 8.6 Witnesses giving oral evidence shall first be asked to confirm the truth of their written statements. Each witness shall then be examined by counsel for the opposing Party (“cross-examination”), and subsequently by counsel for the Party offering the witness, with respect to matters that arose during cross-examination (“re-direct examination”). The Arbitral Tribunal shall have the right to pose questions during or after the examination of any witness. The Arbitral Tribunal shall at all times have control over oral proceedings, including the right to limit or deny the right of a Party to examine a witness when it appears to the Arbitral Tribunal that such evidence for examination is not likely to serve any further relevant purpose.
- 8.7 Witnesses shall be heard under oath or on affirmation.

9. POST-HEARING SUBMISSIONS

- 9.1 On the date determined by the Arbitral Tribunal in consultation with the Parties, the Parties shall simultaneously exchange post-hearing submissions.

10. LANGUAGE

- 10.1 English and Spanish shall be the languages of the arbitration in accordance with this section.
- 10.2 The Parties shall make all its written submissions to the Arbitral Tribunal (including witness statements and expert reports) in either English or Spanish, and may provide translations as they see fit.

10.3 Documentary evidence submitted by the Parties shall be presented in its original language, provided that such language is English or Spanish. Documentary evidence in languages other than English or Spanish must be accompanied by a translation into at least one of the languages of the arbitration.

10.4 Witnesses and experts may testify in their own language, provided that simultaneous translation into English or Spanish or both is available, in a manner to be determined by the Arbitral Tribunal in consultation with the Parties.

11. EXPERT

11.1 The Arbitral Tribunal shall consult with the Parties about the terms of reference of any expert that it intends to appoint.

12. CONFIDENTIALITY

12.1 The Notes of Interpretation issued by the NAFTA Free Trade Commission on Free Trade shall apply to the confidentiality of documentary evidence and submissions. The Arbitral Tribunal's sessions with the Parties and the hearings will be closed to the public.

13. COSTS

13.1 The Chairman shall request the Parties to make advance deposits as required in a special account under his control, from which payments and reimbursements to the arbitrators shall be made. The Chairman shall account to the Parties for such drawdowns. Any balance outstanding at the end of the arbitration shall be refunded to the Parties either in accordance with their joint instructions, or in accordance with any award of cost. The Chairman shall administer the following special account for this purpose and direct the Parties to pay advances as required:

Bank: CIC Paris Saint Philippe du Roule

Bank code: 30066

Desk code: 10161

Account no.: 00010369419

Key: 68

Swift code: CMCIFRPP

13.2 Each arbitrator shall be remunerated for time spent in connection with the arbitration, and reimbursed in respect of all disbursements and charges incurred. The arbitrators have established a common professional rate of US\$600 per hour. The time of the secretary to the Arbitral Tribunal shall be charged to the Parties' Account at US\$300 per hour. The arbitrators and the secretary to the Arbitral Tribunal shall travel on business class. The maximum time chargeable per day shall be 8 hours.

13.3 If scheduled hearings are cancelled or adjourned by the Parties within 30 days of their planned commencement, the arbitrators shall be entitled to reasonable

cancellation/adjournment fees in light of the overall length of time reserved and the period remaining from the notice of cancellation/adjournment to the start of the hearings. The Arbitral Tribunal shall determine in its discretion which Party shall bear the cost of any cancellation/adjournment, or in what proportion such costs shall be borne by the Parties, the intention being that the costs of any cancellation/adjournment caused solely by one Party should be paid by that Party.

14. SEAT OF ARBITRATION

- 14.1 The seat of arbitration shall be Vancouver, British Columbia, Canada.
- 14.2 Unless otherwise agreed by the Parties, the Arbitral Tribunal may conduct hearings and meetings at any location it considers appropriate. Neither Party shall contend that any court has jurisdiction by virtue and the fact that the hearings and/or the meetings are held outside the seat of arbitration.
- 14.3 The Arbitral Tribunal may deliberate at any location it considers appropriate.

15. IBA RULES ON THE TAKING OF EVIDENCE

- 15.1 The Arbitral Tribunal may take into account the IBA Rules on the Taking of Evidence in International Commercial Arbitration with respect to any issue not governed by the UNCITRAL Rules, section B of chapter XI of the NAFTA or this Procedural Order.

16. STATUS OF ORDERS

- 16.1 Any order of the Arbitral Tribunal, including this Procedural Order, may, at the justified request of a Party or on the Arbitral Tribunal's own motion, be varied if the circumstances so require.

17. AWARD

- 17.1 In its award, the Arbitral Tribunal will resolve all the issues raised by the Parties and shall present the reasons in support of its conclusions.
- 17.2 The Arbitral Tribunal shall render its award in Spanish and English.

Jan Paulsson
for the Arbitral Tribunal