

IN THE MATTER OF THE ARBITRATION PROCEEDINGS PURSUANT TO *#TA
CHAPTER 11 AMD THE UNCITRAL ROTES

BETWEEN

GAMI INVESTMENTS INC.

AND

THE GOVERNMENT THE UNITED MEXICAN STATES

Procedural Order No.4

25 September 2003



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Considering paragraph 5.1 of Procedural Order No. 1 and Procedural Orders No. 2 and 3 of the Arbitral Tribunal;

Considering the Respondent's "Memorial on Jurisdictional Objections", dated 12 August 2003, and "Rejoinder on Jurisdictional Objections", dated 30 June 2003;

Considering the Claimant's "Reply to Respondent's Objections to Jurisdictional Order No. 1 and "Rejoinder on Jurisdictional Objections", dated 12 August 2003;

Considering the Respondent's "Memorial on Jurisdictional Objections", dated 12 August 2003, and "Rejoinder on Jurisdictional Objections", dated 30 June 2003;

Considering the Respondent's "Memorial on Jurisdictional Objections", dated 12 August 2003, and "Rejoinder on Jurisdictional Objections", dated 30 June 2003;

Considering the Respondent's uncontradicted representations to the effect that both sides have appealed the aforementioned court judgment;

Considering the oral submissions and answers to questions from the Arbitral Tribunal during the course of the hearings in Washington DC on 17 September 2003;

Considering the Claimant's factual allegations with respect to the merits of the dispute;

Considering the *prima facie* articulation of the Claimant's claim within the text of Chapter 11 of the NAFTA;

Considering that although the Arbitral Tribunal is not convinced by the Respondent's thesis with respect to the meaning of the words "related to" (Article 1101(1)), the alleged proscription of "derivative" claims by virtue of the purported dichotomy of Articles 1126 and 1127, it cannot be excluded, especially in light of the oral delimitation of the Arbitral Tribunal's reasoning will be effected by developments in the merits phase;

Considering therefore the Arbitral Tribunal believes it prudent not to articulate a reasoned decision, particularly with respect to the admissibility of grievances of minority shareholders, until all Acts have been determined with respect to all claims (including quantum);

Considering generally that the Parties' submissions revealed a significant practical overlap between issues of jurisdiction, admissibility and merits;

THE ARBITRAL TRIBUNAL HEREBY RULES:

1. The Respondent has not satisfied the Arbitral Tribunal with its submissions sufficient to demonstrate a lack of jurisdiction in this Arbitral Tribunal with respect to the claims articulated by the Claimant or that such claims are otherwise inadmissible;
2. Given the potential influence of UK law to be investigated on the merits of jurisdictional and admissibility issues, the Arbitral Tribunal reserves the ultimate resolution of these issues to its final award;
3. For the avoidance of doubt, the Arbitral Tribunal emphasises that it is satisfied with the approach and cogent presentation by both sides with respect to jurisdiction and admissibility, and invites no further submissions in this regard (subject to the arbitrators' discretion to ask for specific observations or clarifications as may appear appropriate in light of fixture developments);
4. The Respondent is requested to file its Statement of Defence, together with witness affidavits, expert reports and *faemkettoay evktaroe*, on 15 November 2003;
5. The Claimant shall file its Reply to the Respondent's Statement of Defence, together with any responsive witness statements, expert reports and documentary evidence, on 15 December 2003;
6. The Respondent shall file its Rejoinder to the Claimant's Reply, together with any responsive witness statements, expert reports and documentary evidence, on 2 February 2004;
7. Pursuant to paragraph 5.2 of Procedural Order No. 1, 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.

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 for the Arbitral Tribunal

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