

**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-

ODYSSEY MARINE EXPLORATION, INC. (USA)

(the “Claimant”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/20/1

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Felipe Bulnes Serrano, Presiding Arbitrator

Dr. Stanimir Alexandrov, Arbitrator

Prof. Philippe Sands, Arbitrator

Secretary of the Tribunal

Ms. Anna Toubiana, Legal Counsel, ICSID

23 April 2020

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Introduction

The first session of the Tribunal was held on 17 April 2020 at 11 am Washington D.C. time, by video conference. The session was adjourned at 12:37 pm.

An audio 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

Mr. Felipe Bulnes Serrano, Presiding Arbitrator
Dr. Stanimir Alexandrov, Arbitrator
Prof. Philippe Sands, Arbitrator

ICSID Secretariat:

Ms. Anna Toubiana, Secretary of the Tribunal

Participating on behalf of the Claimant:

Ms. Rachel Thorn, Cooley LLP
Mr. James Maton, Cooley (UK) LLP
Mr. Philip Bowman, Cooley LLP
Mr. Christian Urrutia, Cooley LLP
Mr. Jason File, Cooley LLP
Mr. Juan Nascimbene, Cooley (UK) LLP
Mr. Mark Gordon, Odyssey Marine Exploration
Mr. John Longley, Odyssey Marine Exploration

Participating on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Director General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Ms. Cindy Rayo Zapata, Directora General de Comercio Internacional de Servicios e Inversión, Secretaría de Economía
Mr. Antonio Nava Gómez, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Rafael Alejandro Augusto Arteaga Farfán, Subdirector de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Francisco Diego Pacheco Román, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía
Mr. Alejandro Barragán, Tereposky & DeRose LLP
Ms. Jennifer Radford, Tereposky & DeRose LLP
Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP

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The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 10 March 2020; and
- The parties' comments on the Draft Procedural Order received on 25 March 2020, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

This order records the agreement of the parties on procedural matters set out herein, and where no agreement was reached, sets forth the Tribunal's directions, having heard the parties and deliberated.

Following the session, the Tribunal now issues the present Order:

Order:

1. Commencement of Arbitration

- 1.1. By Notice of Arbitration dated 5 April 2019, the Claimant commenced arbitration proceedings against the Respondent pursuant to Articles 1116, 1117, 1120 and 1122 of Chapter 11, Section B of the North American Free Trade Agreement ("NAFTA") and the Arbitration Rules of the United Nations Commission on International Trade Law adopted by the UN General Assembly on 15 December 1976 (the "UNCITRAL Rules").
- 1.2. The parties agree that the proceedings are deemed to have commenced on 5 April 2019.

2. Applicable Arbitration Rules

Article 1120 and 1139 of the NAFTA

- 2.1. These proceedings are conducted in accordance with the UNCITRAL Rules of 1976, except to the extent that they are modified by Chapter 11, Section B of NAFTA.

3. Constitution of the Tribunal and Tribunal Members' Declarations

Articles 7 and 9 of the UNCITRAL Rules

- 3.1. The Claimant appointed Dr. Stanimir Alexandrov as the first arbitrator on 17 May 2019. His contact details are as follows:

Dr. Stanimir Alexandrov
Stanimir A. Alexandrov PLLC
1501 K Street N.W.
Suite C-072

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Washington D.C. 20005
USA
Email: salexandrov@alexandrovlaw.com

- 3.2. The Respondent appointed Prof. Philippe Sands as the second arbitrator on 3 July 2019. His contact details are as follows:

Prof. Philippe Sands QC
Matrix Chambers
Griffin Building, Gray's Inn
London WC1R 5LN
United Kingdom
Email: PhilippeSands@matrixlaw.co.uk

- 3.3. After consultations with the ICSID Secretariat and the consideration of candidates proposed by the latter, on 2 March 2020, the parties agreed to appoint as Presiding Arbitrator:

Mr. Felipe Bulnes
Magdalena 140, 12th Floor
Las Condes, Santiago
Chile
Email: fbulnes@bub.cl

- 3.4. The parties confirmed that the Members of the Tribunal have been duly and validly appointed and the Tribunal has been duly and validly constituted in accordance with the NAFTA and the UNCITRAL Rules.
- 3.5. The Members of the Tribunal timely submitted their signed declarations in accordance with Article 11 of the UNCITRAL Arbitration Rules. Copies of these declarations were distributed to the parties by the ICSID Secretariat.
- 3.6. The Members of the Tribunal confirmed that they are and shall remain impartial and independent of the parties. Each of the Members of the Tribunal confirmed that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
- 3.7. The Members of the Tribunal confirm that they have sufficient availability during the next 36 months to dedicate to this case.

4. Administrative Authority and Secretary of the Tribunal
ICSID Administrative and Financial Regulation 25

- 4.1. By Claimant's communication of 24 December 2019, and Respondent's communication of 9 January 2020, the parties confirmed their agreement to the

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designation of the International Centre for Settlement of Investment Disputes (ICSID) as the Administering Authority. On 9 January 2020, ICSID accepted the appointment as Administering Authority.

- 4.2. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID's services shall be included in the costs of the arbitration.
- 4.3. The Tribunal Secretary is Ms. Anna Toubiana, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 4.4. Copies of communications by email, mail, and courier/parcel shall be sent to:

Ms. Anna Toubiana

ICSID

MSN C3-300

1818 H Street, N.W.

Washington, D.C. 20433

USA

Tel.: + 1 (202) 473-4934

Fax: + 1 (202) 522-2615

Email: atoubiana@worldbank.org

Paralegal email: galonsogheri@worldbank.org

For local messenger deliveries, the contact details are:

Ms. Anna Toubiana

ICSID

1225 Connecticut Ave. N.W.

(World Bank C Building)

3rd Floor

Washington, D.C. 20036

USA

Tel. +1 (202) 473-4934

5. Fees and Expenses of Tribunal Members

Article 39 UNCITRAL Rules; ICSID Schedule of Fees; Regulation 14 of the ICSID Administrative and Financial Regulations

- 5.1. 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 of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 5.2. Under the current Schedule of Fees, each Tribunal Member receives:

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- 5.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 5.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 5.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 5.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
6. Deposits and Apportionment of Costs
Article 41 UNCITRAL Rules; ICSID Administrative and Financial Regulation 14
- 6.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs, pursuant to Article 40 of the UNCITRAL Rules.
 - 6.2. By letter of 13 January 2020, ICSID requested that each party pay a deposit of US\$200,000 to defray the initial costs of the proceeding.¹ ICSID received Claimant's payment on 11 February 2020 and Respondent's payment on 3 March 2020.
 - 6.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account.
 - 6.4. After the award has been made, the ICSID Secretariat shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
7. Presence and Quorum
- 7.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
8. Decisions and Procedural Rulings of the Tribunal
Article 31 of the UNCITRAL Rules
- 8.1. All awards and decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

¹ As indicated in the Secretariat's communication of 13 January 2020, "*the Centre [had already] received \$10,000 (ten thousand United States dollars) from the Claimant as the prescribed fee for the appointment by the ICSID Secretary-General of the Presiding Arbitrator. Given that the Parties have agreed for ICSID to administer the case, the Centre will apply the US\$10,000 (ten thousand United States dollars) as a partial payment of the Claimant's share of the...advance payment request.*"

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- 8.2. The Tribunal may take decisions by correspondence among its Members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal. If 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.
- 8.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 8.4. The Tribunal's rulings on procedural matters shall be communicated to the parties and may be informed by the Tribunal Secretary in the form of a letter or email. The Tribunal, before issuing a decision on procedural matters, shall consult the disputing parties, save for circumstances when the Tribunal deems it necessary to issue a ruling without consulting both parties.

9. Power to Fix Time Limits

Article 23 of the UNCITRAL Rules

- 9.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 9.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

10. Representation of the Parties

- 10.1. 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 Claimant

Ms. Rachel Thorn
Mr. Philip Bowman
Mr. Christian Urrutia
Mr. Jason File

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For Respondent

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Territorial Cuauhtémoc, Ciudad de
México, C.P. 06140.
Tel. 5557299100 Ext. 15200
orlando.perez@economia.gob.mx

Ms. Cindy Rayo Zapata
Directora General de Comercio
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Mr. James Maton
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Mr. Stephan E. Becker
Pillsbury Winthrop Shaw Pittman LLP
stephan.becker@pillsburylaw.com

11. Place of Arbitration

Article 16 of the UNCITRAL Rules; Article 1130 of the NAFTA

- 11.1. Toronto, Canada, shall be the place of arbitration.
- 11.2. The hearings shall be held at ICSID's headquarters in Washington, D.C. The Tribunal may hold hearings at any other place that it considers appropriate.
- 11.3. The Tribunal may deliberate at any place it considers convenient.
- 11.4. All awards shall be deemed to have been made at the place of arbitration, regardless of where the award is signed.

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12. Procedural Language(s), Translation and Interpretation

Article 17 of the UNCITRAL Rules

- 12.1. English and Spanish are the procedural languages of the arbitration.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

For Parties' Pleadings

- 12.3. Any written requests and applications over three pages long shall be submitted simultaneously in both procedural languages as long as it does not exceed ten pages. If the request or application exceeds ten pages, it may be submitted in either procedural language with a translation to follow within 10 business days.
- 12.4. Pleadings, witness statements and expert reports shall be submitted in one procedural language, provided that a translation to the other procedural language is filed within 20 business days thereafter.
- 12.5. Any accompanying documents, such as exhibits and legal authorities, shall be submitted in one procedural language, provided that a translation to the other procedural language is filed within 20 business days thereafter. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 12.6. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 12.7. Documents exchanged between the parties under §17 below (Production of Documents) shall be produced in the original language and need not be translated.

For Hearing

- 12.8. Either English or Spanish may be used during hearings, meetings, or conference calls with the Tribunal. Simultaneous interpretation from one language into the other language shall be available at all times during hearings, meetings or conference calls with the Tribunal. Transcripts shall be taken in both languages during hearings. All conference calls with the Tribunal shall be recorded. They shall be transcribed only at the request of a party.
- 12.9. The testimony of a witness called for examination during the hearings shall be interpreted simultaneously into English and Spanish.

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- 12.10. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require interpretation.
- 12.11. The costs of the interpreter(s) 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

- 12.12. The Tribunal may initially make any order or decision in English or Spanish and subsequently shall issue that order or decision in the other procedural language. Both language versions shall be equally authentic.

For Tribunal's Award

- 12.13. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

13. Routing of Communications

Article 15(3) of the UNCITRAL Rules

- 13.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal. If such communications contain attachments, they shall be text searchable to the extent possible (i.e., OCR PDF or Word Document).
- 13.2. 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 after both sides have submitted their respective communications.
- 13.3. 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.
- 13.4. The parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

14. Written and Oral Procedures

Articles 15(1), 15(2), 18, 19 and 22 of the UNCITRAL Rules

- 14.1. The proceeding shall consist of a written phase followed by an oral phase.

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- 14.2. The written procedure will comprise two rounds of pleadings per side to be filed on the dates established in the Procedural Timetable of **Annex A**, except if the Tribunal, at the reasonable request of any party or on its own initiative, decides that for good cause this Procedural Timetable has to be amended.

15. Number of Copies and Method of Filing of Main Pleadings

- 15.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary, the opposing party and the Members of the Tribunal an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading (the “Electronic E-mail Filing”), (without supporting exhibits and without legal authorities).²
- 15.2. By the end of the third business day following the Electronic E-mail Filing, the parties shall upload the pleading, with all the supporting documentation to the file sharing platform that has been created by ICSID for purposes of this case (the “Electronic Box Filing”).
- 15.3. The filing process indicated under §15.1 and §15.2 shall apply to both to the original language submission and to any subsequent translations submitted pursuant to §12.
- 15.4. Three business days following the Electronic E-mail Filing of the translations, the parties shall courier to the opposing party at the addresses indicated at §10.1 above and to each Member of the Tribunal at the addresses indicated at §3.1 to §3.3 above:
- 15.4.1. one USB drive readable both on PC and Mac, with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.
- 15.5. The Tribunal does not wish to receive hard copies of any submission from the parties.
- 15.6. Electronic versions of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word) to the extent possible and without annotation or printing restrictions.
- 15.7. All pleadings shall be accompanied by a cumulative index hyperlinked to 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. The cumulative hyperlinked index shall be provided five business days after the submission of the pleading.

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

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- 15.8. 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 courier to the ICSID Secretariat and each Member of the Tribunal a USB drive readable both on PC and Mac, containing 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 hyperlinked index of all documents.
- 15.9. The official date of receipt of a pleading or communication shall be the day in Washington D.C. (EST) when the electronic version is sent to the Tribunal Secretary.
- 15.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time (EST), on the relevant date.

16. IBA Rules as Guidelines for Rulings on Evidence

- 16.1. For matters concerning the gathering or taking of evidence that are not otherwise covered by a procedural order issued by the Tribunal, the UNCITRAL Rules or NAFTA Chapter 11, the Tribunal may refer to the *IBA Rules on the Taking of Evidence in International Arbitration* (2010) (the “IBA Rules”) for guidance as to the practices commonly accepted in international arbitration, but it shall not be bound to apply them.

17. Production of Documents

- 17.1. Each party may request the production of a limited and reasonable number of documents from the other party upon the completion of the first round of submissions, in accordance with the Procedural Timetable set out in Annex A.
- 17.2. Requests for the production of documents shall be in writing and shall include a description of the documents or class of documents requested and shall include a date or range of dates and the subject matter, and the identity of the recipients and senders insofar as possible. For greater certainty, it would not suffice to make general and unspecific requests such as “all documents related to” a particular subject or matter. Each request shall also explain why the documents sought are relevant to the dispute and material to the outcome of the case.
- 17.3. Unless the requested party objects to production, it shall produce the requested documents within the schedule set out in Annex A. If a party objects to only a certain aspect of a request, that party shall produce the documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural timetable.
- 17.4. The parties shall seek agreement on production requests to the greatest extent possible.

Objections

17.5. If the requested party objects to production, the following procedure shall apply:

17.5.1. The requested party shall submit by email a response stating which documents or classes of documents it objects to producing by the date specified in Annex A. The response shall state the reasons for each objection and shall indicate the documents, if any, that the party would be prepared to produce instead of those requested.

17.5.2. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.

Reply to Objections

17.5.3. The requesting party shall respond to the other party's objection by the date specified in the Document Production schedule in Annex A, indicating, with reasons, whether it disputes the objection.

Decision by the Tribunal to Disputed Requests

17.5.4. For any request for production where the parties have been unable to reach agreement, the parties shall simultaneously submit all outstanding requests that they wish to pursue to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.

17.5.5. Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex C** in Word format. The parties shall use the model format throughout their exchange of requests, objections, and responses.

17.5.6. The Tribunal shall rule on any such application. The Tribunal shall endeavour to rule on any such application in accordance with the schedule set out in Annex A of this Order, and any production so ordered shall be produced in accordance with the schedule set out in Annex A of this Order. To the extent that the documents requested are overly extensive in number, the Tribunal will not endeavour to follow such schedule.

17.5.7. Should a party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.

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- 17.6. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.
- 17.7. When applicable, the producing party shall group the documents produced by request and identify the relevant request.
- 17.8. The requested documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. The producing party shall also deliver a USB drive with a complete set of the documents to the requesting party within three business days of the corresponding due date.
- 17.9. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.
- 17.10. Pursuant to UNCITRAL Rules, the Tribunal may also, of its own motion, request the production of documents.
- 17.11. Documents produced according to the above procedure shall not be considered part of the record unless and until a party subsequently submits them in accordance with the provisions of §15 of this Order.

18. Documentary Evidence

Article 24 of the UNCITRAL Rules

- 18.1. Written pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.
- 18.2. The documents shall be submitted in the manner and form set forth in §18.5 below.
- 18.3. Neither party shall be permitted to submit additional or responsive documents or testimony or expert reports after the filing of its respective last written submission, except in exceptional circumstances with leave from the Tribunal, to be granted upon a showing of good cause and after the other party has had the opportunity to comment.
 - 18.3.1. Should a party request leave to file additional or responsive documents, testimony or expert reports, that party shall not annex the documents that it seeks to file to its request.
 - 18.3.2. If the Tribunal grants such an application and admits the document into evidence, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning the new document, testimony or expert report.

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- 18.4. The Tribunal may call upon the parties to produce documents or other evidence if it deems it necessary, in accordance with Article 24(3) of the UNCITRAL Rules.
- 18.5. The documents shall be submitted in the following form:
- 18.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 18.5.2. The number of each Exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL” for legal exhibits containing authorities. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.
- 18.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 18.5.4. An exhibit list shall accompany each submission. Said list shall contain the exhibit number, date and title of the document.
- 18.5.5. Exhibits shall be submitted in PDF format and start with the number “C-0001” and “R-0001,” 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 simultaneously in English and Spanish. The first page of each Exhibit shall be marked with the Exhibit identification number.
- 18.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex B**.
- 18.6. 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.
- 18.7. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 18.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

19. Witness Statements and Expert Reports

Articles 25 and 27 of the UNCITRAL Rules

- 19.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 19.2. Each witness statement shall contain at least the following:
 - 19.2.1. the name and present address of the witness;
 - 19.2.2. a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
 - 19.2.3. a description of any past and present relationship (if any) between the witness and the parties, counsel, or Members of the Tribunal;
 - 19.2.4. a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge. Documents on which the witness relies that have not already been submitted shall be provided together with the witness statement;
 - 19.2.5. a statement as to the language in which the witness statement was originally prepared;
 - 19.2.6. a declaration that the contents of the statement are true; and
 - 19.2.7. the signature of the witness.
- 19.3. Any document relied upon by a witness or expert shall be clearly identified and included as an annex to the witness statement or expert report, unless it has already been submitted as an exhibit in this proceeding, in which case the witness statement or expert report shall indicate the exhibit number.
- 19.4. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 19.5. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §18.3).
- 19.6. Each witness statement and expert report shall be signed and dated by the witness or expert affirming the truth and accuracy of the statements contained therein.
- 19.7. In accordance with Article 27 of the UNCITRAL Rules, the Tribunal may, on its own initiative or at the request of a party, appoint one or more experts. The Tribunal

shall consult with the parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

20. Examination of Witnesses and Experts

Articles 24(3), 25 and 27 of the UNCITRAL Rules

- 20.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any witness or expert whose written testimony has been submitted with the Pleadings. The Tribunal may also direct a witness to appear for examination even if that witness is not called by the opposing party for cross-examination.
- 20.2. Subject to the Tribunal's approval, each party may call to testify any of its own witnesses or experts. Any witness or expert called for direct examination may be cross-examined by the other party. In this case, the Tribunal shall decide upon the scope of the examination by each party.
- 20.3. If a witness or expert fails to appear at the hearing without justification, the Tribunal may disregard any witness statement related to that evidentiary hearing by that witness unless, in exceptional circumstances, the Tribunal decides otherwise.
- 20.4. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video conference may be permitted for justified reasons at the discretion of the Tribunal.
- 20.5. The failure to cross-examine a witness or an expert or the partial cross-examination of a witness or an expert shall not imply an acceptance of the content of the corresponding witness statement or expert report. Each party remains free to challenge the content of the witness statement or expert report by all available means of evidence and the Tribunal remains free to assess the probative value of the witness statement or expert report in its discretion.
- 20.6. Each party shall notify the opposing party which witnesses and experts it intends to call for cross-examination within four weeks after completion of the Written Procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to examine, if any.
- 20.7. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witness and experts shall make a declaration of truthfulness.
- 20.8. Direct examination is given in the form of witness statements and expert reports. However, the party presenting a fact witness or expert may conduct a brief (not to exceed 10 minutes) direct examination at the hearing, limited to a confirmation by

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the witness or expert of their identity, the veracity of their witness statement, any corrections that might need to be made and central points of their testimony.

- 20.9. In lieu of a direct examination, experts may present their testimony (consistent with their reports) in a presentation lasting no longer than 30 minutes before the start of their cross-examination, summarizing their methodology and conclusions of their expert reports.
- 20.10. Subject to the discretion of and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion. Re-direct examination shall be limited to the subject of cross-examination.
- 20.11. Except for a witness who is also designated as a party representative, witnesses shall be allowed in the hearing room only after having given their oral evidence. Experts shall be allowed in the hearing room at any time. Witnesses who are designated as party representatives shall render their testimony as early as possible in the course of the hearing.

21. Pre-Hearing Organizational Meetings

- 21.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

22. Hearings

Article 25 of the UNCITRAL Rules

- 22.1. The hearing shall be held at a place to be determined in accordance with §11 above.
- 22.2. The hearing shall take place on the dates set forth in Annex A.
- 22.3. The Members of the Tribunal shall endeavour to reserve at least one day after the hearing to determine the next steps, including in relation to deliberations.
- 22.4. The proceedings shall be governed by the principle that each party shall have an equal opportunity to present its case and, as a corollary each party should in principle enjoy equal time using the chess clock approach, under the control of the Tribunal. The Secretary of the Tribunal will keep a chess clock, and will advise the parties daily of the length of time that each has used.

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- 22.5. In accordance with Article 25(4) of the UNCITRAL Rules, hearings shall be held *in camera* unless the parties agree otherwise. However, provisions shall be made for representatives of the other NAFTA Parties to observe, but not participate in, the hearing as a courtesy upon request.
- 22.6. All other matters regarding hearings shall be agreed upon by the disputing parties or decided by the Tribunal at a later stage.

23. Records of Hearings and Sessions

Article 25(3) of the UNCITRAL Rules

- 23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Members of the Tribunal.
- 23.2. Verbatim transcript(s) in the procedural languages 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 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.
- 23.3. Questions concerning significant errors of interpretation or translation should be raised as soon as possible during the proceedings to the extent possible.
- 23.4. The parties shall agree on any corrections to the transcripts within 30 days of the date of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties 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.

24. Post-Hearing Submissions and Statements of Costs

Article 38 of the UNCITRAL Rules

- 24.1. At the conclusion of the hearing, the Tribunal shall decide after consultation with the parties whether the parties will file post-hearing submissions, as well as when and in what form the parties shall file their submissions on costs.

25. Non-Disputing Party Submissions.

Article 1128 of the NAFTA; FTC Statement on Non-Disputing Party Participation dated 7 October 2003

- 25.1. The Governments of Canada and the United States of America may make submissions to the Tribunal pursuant to the procedure and requirements set forth in NAFTA Article 1128 and in accordance with the schedule set out in Annex A.
- 25.2. 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

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leave from the Tribunal to file such a submission in accordance with the schedule set out in Annex A. 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. As recognized therein, the disputing parties shall have the right to respond to all applications and submissions by non-disputing parties.

26. Transparency, Confidentiality and Publication

NAFTA article 1137(4); FTC Note of Interpretation dated 31 July 2001, Section A: Access to Documents; Article 32(5) of the UNCITRAL Rules

26.1. Section A (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued on 31 July 2001, shall apply to the treatment of documents in these proceedings.

26.2. Subject to the procedures for the protection of confidential information (i.e., confidential business information, information which is privileged or otherwise protected from disclosure under domestic law, or information which must be withheld pursuant to the applicable arbitral rules) that shall be established in a subsequent Procedural Order by the Tribunal after consultation with the parties (the “Confidentiality Order”), ICSID shall have permission to publish:

26.2.1. Any orders, decisions, interim or partial awards, as well as the final award, issued by the Tribunal.

26.2.2. The following submissions (but not the supporting witness statements, expert reports, exhibits, or legal authorities): (i) Claimant’s notice of arbitration; (ii) Claimant’s Memorial; (iii) Respondent’s Counter-Memorial; (iv) Claimant’s Reply; (v) Respondent’s Rejoinder.

26.2.3. Any written submission by other NAFTA Parties.

26.2.4. Any written submission by third persons (*amicus curiae*) that have been admitted by the Tribunal.

27. Immunity of the Tribunal

27.1. The parties agreed that no Member of the Tribunal shall be liable to any party howsoever for any act or omission in connection with this arbitration.

27.2. The parties agreed that no Member of the Tribunal shall be under any legal obligation to make any statement to any party or any person about any matter concerning the arbitration; nor shall any party seek to make any Member of the Tribunal a witness or participant in any legal or other proceedings arising out of or in connection with the arbitration.

[Signed]

Mr. Felipe Bulnes
President of the Tribunal
Date: 23 April 2020

ANNEX A

PROCEDURAL TIMETABLE

Date	Period of Time	Party / Tribunal	Description
3 August 2020	N/A	Claimant	Memorial
16 November 2020	15 Weeks from Memorial	Respondent	Counter-Memorial
30 November 2020	2 Weeks from Counter-Memorial	Claimant and Respondent	Requests for Document Production
14 December 2020	2 Weeks from Requests for Document Production	Claimant and Respondent	Production of non-objected documents and Objections to the Requests for Document Production (if any)
28 December 2020	2 Weeks from production of non-objected documents and Objections	Claimant and Respondent	Reply to the Objections to the Requests for Document Production Redfern Schedule provided to Tribunal
18 January 2021	3 Weeks from Reply to Objections	Tribunal	Decision of Tribunal
8 February 2021	3 Weeks from Decision of Tribunal	Claimant and Respondent	Simultaneous production of documents ordered by Tribunal

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Date	Period of Time	Party / Tribunal	Description
8 March 2021	16 Weeks from Counter-Memorial	Claimant	Reply
14 June 2021	14 Weeks from Reply	Respondent	Rejoinder
5 July 2021	3 Weeks from Rejoinder	Non-Disputing Party	Non-Disputing Party Submissions
2 August 2021	4 Weeks from Non-Disputing Party Submissions	Claimant and Respondent	Parties' Comments on Non-Disputing Party Application
TBD	4 Weeks after completion of Written Procedure	Claimant and Respondent	Notification of Witnesses each Party is calling for examination
TBD	No later than 4 Weeks prior to the Hearing	All	Pre-Hearing Conference
TBD [2 Weeks]	N/A	All	Hearing on Jurisdiction and Liability

ANNEX B

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).

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Merits -ENG</i>
	<i>Counter-Memorial on the Merits -SPA</i>
	<i>Reply on Merits-ENG</i>
	<i>Rejoinder on Merits - SPA</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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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 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			