

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Legacy Vulcan, LLC

v.

United Mexican States

(ICSID Case No. ARB/19/1)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Albert Jan van den Berg, President of the Tribunal

Prof. Sergio Puig, Arbitrator

Prof. Guido Santiago Tawil, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

November 26, 2019

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Introduction

The first session of the Tribunal was held on November 6, 2019, beginning at 7:00 p.m. Washington D.C. time, by telephone conference. The session was adjourned at 8:55 p.m. Washington D.C. time.

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 on November 8, 2019.

Participating in the conference were:

Members of the Tribunal

Prof. Albert Jan van den Berg, President of the Tribunal
Prof. Sergio Puig, Arbitrator
Prof. Guido Santiago Tawil, Arbitrator

ICSID Secretariat:

Ms. Sara Marzal, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Miguel López Forastier, Covington & Burling LLP
Ms. Mary T. Hernandez, Covington & Burling LLP
Ms. Clovis Trevino, Covington & Burling LLP
Mr. Carlos Eduardo Martínez Betanzos, Creel, García-Cuéllar, Aiza y Enríquez, S.C.
Mr. Luis M. Jardón Piña, Creel, García-Cuéllar, Aiza y Enríquez, S.C.
Ms. Gabriela Schafler Villalobos, García-Cuéllar, Aiza y Enríquez, S.C.
Mr. Mitesh Shah, Vulcan Materials Company
Mr. Jason Nabors, Vulcan Materials Company

Participating on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Secretaría de Economía
Ms. Cindy Rayo Zapata, Secretaría de Economía
Mr. Rafael Rodríguez Maldonado, Secretaría de Economía
Mr. Miguel Ángel Galindo Vega, Secretaría de Economía
Mr. Jorge Luis Andres Jose, Secretaría de Economía
Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 9, 2019;
- The Draft Procedural Order circulated by the Tribunal Secretary on October 9, 2019; and
- The parties' comments on the Draft Procedural Order received on October 31, 2019, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

NAFTA Article 1120; Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent that they are modified by Section B of NAFTA Chapter Eleven.

2. Constitution of the Tribunal and Tribunal Members' Declarations

NAFTA Article 1123; Arbitration Rule 6

2.1. The Tribunal was constituted on September 20, 2019, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted in accordance with Article 1123 of the NAFTA 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 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on September 20, 2019.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

2.4. 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. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

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 of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

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- 3.2.1. 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
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where 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.
 - 5.3. The Tribunal will draft all rulings, including the Award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.
6. Power to Fix Time Limits
Arbitration Rule 26(1)
 - 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
 - 6.2. 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.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Sara Marzal, 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:

Sara Marzal
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-6434
Fax: + 1 (202) 522-2615
Email: smarzal@worldbank.org
Paralegal email: fsalonkajganich@worldbank.org

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

Sara Marzal
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties

Arbitration Rule 18

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.

For Claimant

Mr. Miguel López Forastier
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Mr. Diego Francisco Pacheco Román
Director de Consultoría Jurídica de
Comercio Internacional D
Mr. Rafael Rodríguez Maldonado
Director de Consultoría Jurídica de
Comercio Internacional E
Mr. Miguel Ángel Galindo Vega
Director de Comercio Internacional de
Servicios e Inversión
Mr. Jorge Luis Andrés Jose
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Miguel.galindo@economia.gob.mx
jorge.andres@economia.gob.mx
stephan.becker@pillsburylaw.com

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 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. By letter of September 26, 2019, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on October 6, 2019. On November 14, 2019, ICSID received a wire transfer of US\$200,000 from the Government of Mexico without any specific reference. By email of November 22, 2019, Respondent's representatives confirmed that the received amount corresponds to Respondent's payment of its share of the advance payment in the present case. The Secretariat will send a formal acknowledge receipt as soon as the funds have been transferred to the case account.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. After the Award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
10. Place of Proceeding
NAFTA Article 1130; Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Hearing shall be held at ICSID's headquarters in Washington, D.C.
- 10.3. The Tribunal may deliberate at any place it considers 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 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.
- 11.3. The main pleadings, expert opinions, witness statements, and any other accompanying documentation shall be submitted in either procedural language.
- 11.4. Documents filed in any other language other than the procedural languages must be accompanied by a translation into one of the procedural languages.

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- 11.5. If the accompanying document to the main pleadings, expert opinions and witness statements 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.
 - 11.6. 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.
 - 11.7. Documents exchanged between the parties under §15 below (“Production of Documents”) may be produced in their original language and need not be translated.
 - 11.8. The Hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
 - 11.9. 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.
 - 11.10. The Tribunal may make any order or decision in English or Spanish.
 - 11.11. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.
12. Routing of Communications
Administrative and Financial Regulation 24
- 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 only to the Tribunal Secretary, 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.
13. Number of Copies and Method of Filing of Parties’ Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23
- 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 the supporting documentation attached to the pleading;¹ and
- 13.1.2. upload the pleading, with all the supporting documentation, to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to the translation into the other procedural language referred in § 11.4 above (when applicable), as well as to any subsequent translations agreed by the parties.

- 13.2. Within three business days following the electronic filing, the parties shall courier to Prof. van den Berg and Prof. Puig, at the addresses indicated at §13.3 below one hard copy (double sided in A5 format with soft cover) of the entire submission both in the original language and translations (when applicable) including the pleading, the witness statements, expert reports, together with any exhibits (but not including legal authorities).
- 13.3. The addresses of the Tribunal Members are as follows:

Prof. Albert Jan van den Berg
IT Tower, 9th Floor
Avenue Louise 480 Bte 9
1050 Brussels
Belgium
Tel: +32 2290 3913

Prof. Sergio Puig
1201 E Speedway Blvd.
Tucson, Arizona 85721-0176
United States of America
Tel: +1 520-626-1659

Prof. Guido Santiago Tawil
Ed. Aguas Azules II Ap 003
Rbla. Lorenzo Batlle
Pacheco Pda. 32
20167-01236 Punta del Este,
Maldonado
Uruguay
Tel: +598 4249 7485

- 13.4. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.5. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.6. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and, the pleading with which it was submitted. (Please follow the naming conventions contained in Annex B).

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

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- 13.7. 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 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. The Tribunal or the Secretary of the Tribunal may also request at any time of the proceeding additional hard copies of the case file.
- 13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
- 13.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 14.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex A, except if the Tribunal, upon a showing of good cause by either party or on its own initiative, decides that this Procedural Timetable requires amendment.
- 14.2. Amendments to the Procedural Timetable will be made by reissuing Annex A.
15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36
- 15.1. The disputing parties shall have an opportunity to request a reasonable number of documents (“Request for Documents”) from the other disputing party in accordance with the timetable set out in Annex A.
- 15.2. The parties shall limit document production to 20 requests. A party planning to make more than 20 requests shall announce it one week before the submission of the request (as per Annex A), explaining the reasons and need for a higher number.
- 15.3. In exceptional circumstances, the parties may seek leave from the Tribunal to request additional documents upon a showing that such extemporaneous request is justified by the discovery of a new fact that the requesting party did not know and that such ignorance could not have been prevented through the exercise of due diligence. Before ruling, the Tribunal shall hear any observations the requested party may have.
- 15.4. Requests for Documents shall be submitted to the opposing party (without copying the Secretary of the Tribunal) in Word format using the Redfern Schedule provided in Annex C, by the date specified in Annex A.

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- 15.5. Each document request shall comply with the requisites established in Article 3(3) of the IBA Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (“IBA Rules”). The description of a category of documents in the document request shall include a date or range of dates and the subject matter insofar as possible.
- 15.6. Any request which does not comply with the requirements set out in Article 3(3) shall be rejected *in limine*.

Procedure in the Event of Objections

- 15.7. To the extent that a party considers that a requested document or category of documents is not subject to production (a “Disputed Request”), the following procedure shall apply:

Objections

- 15.8. The party that has received a Request for Documents shall submit its objections by email to the requesting party (without copying the Secretary of the Tribunal) by the date specified in Annex A.
- 15.9. The objections shall be included in the Redfern Schedule containing the document requests and shall be submitted in Word format.
- 15.10. Objections to the production of a document or 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

- 15.11. The requesting party shall reply to the objections to produce by the date specified in Annex A, as amended from time to time by agreement of the parties or by decision of the Tribunal.
- 15.12. The reply to the objections shall be included in the Redfern Schedule containing the requests and the objections and shall be submitted in Word format to the opposing party and the Secretary of the Tribunal.

Decision by the Tribunal to Disputed Requests

- 15.13. Disputed Requests will be decided by the Tribunal on a case-by-case basis, as soon as possible, upon receipt of the reply to the objections.
- 15.14. The Tribunal’s decision on Disputed Requests will be included in the same Redfern Schedule containing the request, objections and reply, using the column or row reserved for that purpose.

Document Production

- 15.15. Documents or categories of documents pertaining to undisputed requests shall be produced by the due dates indicated in Annex A.
- 15.16. Documents or categories of documents pertaining to Disputed Requests shall be produced by the date determined by the Tribunal in Annex A.
- 15.17. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel or native format whenever possible.
- 15.18. The requested documents shall be made available to the requesting party by the due date using a suitable means of electronic communications 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 and the list to the requesting party within three business days of the corresponding due date.
- 15.19. Documents produced in response to a Request for Documents will not be part of the record, unless they are included as exhibits to a written submission or as an annex to a witness statement or expert report.
- 15.20. The Tribunal may, where appropriate, make necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection.

Compliance with Document Requests

- 15.21. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.
- 15.22. If the Tribunal determines that a disputing party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the party making the submission, including exhibits and legal authorities. Further 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.

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- 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 exceptional circumstances exist based on a reasoned written request 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 a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 16.5.2. 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.
 - 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
 - 16.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in Annex B.
- 16.6. 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.
- 16.7. 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.

- 16.8. 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.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 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 exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 17.4. It shall not be improper for a disputing party, its officers, employees, legal advisors or other representatives to interview that party's witnesses or potential witnesses and to discuss their prospective testimony with them.
- 17.5. All witness statements and expert reports shall be signed and dated by the witness or expert, and include all the information contemplated in Articles 4(5) and 5(2), respectively, of the IBA Rules.
18. Examination of Fact Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. A party may be called upon by the opposing party to produce at the Hearing for cross-examination any factual or expert witness whose written testimony has been proffered with the pleadings.
- 18.2. The Tribunal may disregard the testimony of a fact 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.
- 18.3. Each party shall notify the opposing party which fact witness and experts it intends to call for cross-examination four weeks before the Hearing. Shortly after the parties' notifications, the Tribunal will indicate which fact witnesses or experts, not called by the parties, it wishes to question, if any.

- 18.4. Fact witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the fact witness or expert at any time during the Hearing. Fact Witnesses and experts shall make a declaration of truthfulness.
 - 18.5. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the fact witness or expert may conduct a brief direct examination at the Hearing, limited to the content of their corresponding witness statement or expert report. Absent a different ruling from the Tribunal at pre-hearing organizational meeting:
 - 18.5.1. Fact witnesses' direct examination shall not last more than 15 minutes.
 - 18.5.2. Expert witnesses may provide a presentation of the key points of their respective reports either directly and/or through direct examination for no longer than 30 minutes.
 - 18.6. Any witness called for direct examination may be cross examined by the other party and questioned by the Tribunal.
 - 18.7. The fact witness or expert may be cross-examined on the contents of the witness statement or expert report, the fact witness or expert's credibility and on documents or facts that, despite not being addressed in his or her witness statement or expert report, are documents or facts about which the witness has first-hand or personal knowledge, or issues on which the expert should reasonably be able to provide an opinion. Re-direct examination shall be limited to the issues raised during cross-examination.
 - 18.8. Fact witnesses shall be allowed in the hearing room after having given their oral evidence. Experts shall be allowed in the hearing room at any time.
19. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 19.1. A pre-hearing organizational meeting shall be held at a date to be 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.
20. Hearings
Arbitration Rules 20(1)(e) and 32; FTC Statements October 7, 2003 and July 16, 2004
- 20.1. The oral procedure shall consist of a Hearing for examination of witnesses and experts, if any, and for oral arguments.
 - 20.2. The hearing shall be held at the seat of the Centre (Washington, D.C.).
 - 20.3. The date of the Hearing is set forth in Annex A.

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- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the Hearing to determine the next steps and to hold deliberations.
- 20.5. The principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings. Each party shall be permitted to use the time allocated to it as it sees fit, with the exception of opening and closing arguments, for which the Tribunal may set some time limits that will apply equally to both parties.
- 20.6. Hearings shall be closed to the public. However, provisions shall be made for representatives of the other NAFTA Parties to attend the hearing upon request.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcripts 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.
- 21.3. The parties shall agree on any corrections to the transcripts within 40 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 after receiving the correction from the parties (“Revised Transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the parties in the Revised Transcripts.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. The Tribunal shall decide at the Hearing, after hearing the Parties, whether, by when and under what conditions any post-hearing submission may be required, and when cost submissions are to be made.
23. Schedule
- 23.1. The Timetable is attached as Annex A.
24. Publication and Confidentiality
NAFTA Article 1137.4 and Annex 1137.4; FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents; *Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*
- 24.1. Matters concerning confidentiality and privacy of the arbitral proceedings, rulings,

orders, decisions and the Award shall be the subject of a separate confidentiality order that the Tribunal will issue in consultation with the disputing parties (the “Confidentiality Order”).

- 24.2. The written submissions by the Governments of Canada or the United States of America (“Non-Disputing NAFTA Parties”) and the written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal shall be published on the dates determined by the Tribunal in Annex A.
- 24.3. Supporting witness statements, expert reports, exhibits or legal authorities submitted with any pleading shall not be published and may not be disclosed to any third party. To the extent any disputing party refers to or provides in a submission evidence covered by or subject to non-disclosure agreements (or similar agreements preventing disclosure or protecting confidentiality) or confidentiality orders entered by other courts (for example, protective orders), the Tribunal and the disputing parties will be subject to and must comply with the provisions of any such non-disclosure agreements or confidentiality orders.

25. Data Protection

- 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 these arbitration proceedings.
- 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 proceedings, where necessary.
- 25.3. Each of the parties and their representatives shall indemnify and hold harmless the Tribunal with respect to any breach of applicable data protection and privacy regulations by the party or its representatives in relation to the arbitration proceedings.

26. Non-Disputing NAFTA Parties
NAFTA Articles 1127, 1128 and 1129

- 26.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in Annex A.
- 26.2. 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 the Confidentiality Order, 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.

26.3. The disputing parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in Annex A.

27. Amicus Curiae Participation

FTC Statement on Non-Disputing Party Participation dated 7 October 2003; Arbitration Rule 37(2);

27.1. If a request for the submission of an *amicus curiae* brief is filed by the date indicated in Annex A, the Tribunal will give the appropriate directions in the exercise of its powers under Arbitration Rule 37(2) and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003.

27.2. By the relevant dates indicated in Annex A, 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.

27.3. 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]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: November 26, 2019

Annex A

Procedural Calendar

<i>Description</i>	<i>By</i>	<i>Days</i>	<i>Date</i>	<i>PO No. 1 §</i>
First Session	All	0	6-Nov-2019	Introduction
Memorial	Claimant	+ 17 weeks and 5 days	9-Mar-2020	§16
Requests for Production of Documents	Respondent	+ 2 weeks	23-Mar-2020	§§15.1-15.6
Production of Non-Objected Documents (on a rolling basis, if necessary)	Claimant	+ 4 weeks	20-April-2020	§15.15
Objections to Document Requests				§§15.7-15.9
Reply to Objections to Document Requests	Respondent	+ 1 week	27-April-2020	§§ 15.10-15.11
Decision on Requests	Tribunal	+2 week	11-May-2020	§§15.12-15.13
Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	Claimant	+2 weeks	18-May-2020	§§15.14-15.18
Counter-Memorial	Respondent	+ 17 weeks from Memorial	6-July-2020	§16
Requests for Production of Documents	Claimant	+ 2 weeks	20-July-2020	§§15.1-15.6
Production of Non-Objected Documents (on a rolling basis, if necessary)	Respondent	+ 4 weeks	17-Aug-2020	§15.15
Responses and Objections to Document Requests				§§15.7-15.9
Reply to Objections to Document Requests	Claimant	+ 1 week	24-Aug-2020	§§ 15.10-15.11
Decision on Requests	Tribunal	+ 2 weeks	7-Sept-2020	§§15.12-15.13

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Procedural Order No. 1 – Annex A

<i>Description</i>	<i>By</i>	<i>Days</i>	<i>Date</i>	<i>PO No. I §</i>
Production as Ordered (and Completion of Production of Non-Objected Documents, if necessary)	Respondent	+ 2 weeks	21-Sept-2020	§§15.14-15.18
Reply	Claimant	+ 15 weeks from Counter Memorial	19-Oct-2020	§16
Rejoinder	Respondent	+ 15 weeks from Reply	1-Feb-2021	§16
Submissions under NAFTA Article 1128 and applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TBD	+ 3 weeks	22-Feb-2021	§§ 26.1, 27.1
Comments on NAFTA Article 1128 submissions and on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Claimant and Respondent	+ 3 weeks	15-Mar-2021	§§ 26.3, 27.2
Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	+ 2 weeks	29-Mar-2021	§ 27.1
Claimant's and Respondent's comments, and NAFTA Article 1128 submissions, on non-disputing party (<i>amicus</i>) submissions, if any	Claimant and Respondent/ TBD	TBD	TBD	§ 27.2
Pre-Hearing Organizational Meeting	All	8 weeks and 6 days before Hearing	25-May-2021	§ 19
Notification of Witnesses and Experts	Claimant and Respondent	7 weeks before Hearing	7-June-2021	§ 18.3

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Procedural Order No. 1 – Annex A

<i>Description</i>	<i>By</i>	<i>Days</i>	<i>Date</i>	<i>PO No. I §</i>
Hearing Commencement	All	+25 weeks from Rejoinder	26-Jul-2021	§ 20
Hearing Ends (5 days + 1 in reserve)	All	5 days	31-Jul-2021	§ 20
Simultaneous Post-Hearing Submissions (if any)	Claimant and Respondent		TBD	§ 22
Simultaneous Reply Post-Hearing Submissions (if any)	Claimant and Respondent		TBD	§ 22
Simultaneous Costs Submissions	Claimant and Respondent		TBD	§ 22
Award	Tribunal		TBD	§ 5.3

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).

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	CL-####–LANGUAGE
	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

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Procedural Order No. 1 – Annex B

	<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 Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<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

Redfern Schedule

No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			