

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

FIRST MAJESTIC SILVER CORP.

Claimant

and

UNITED MEXICAN STATES

Respondent

(ICSID Case No. ARB/21/14)

DECISION ON CLAIMANT'S SECOND REQUEST FOR PROVISIONAL MEASURES

Members of the Tribunal

Prof. Giorgio Sacerdoti, President of the Tribunal

Prof. Stanimir A. Alexandrov, Arbitrator

Prof. Yves Derains, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

Date of dispatch to the Parties: 29 January 2026

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I. Introduction

1. This Decision addresses the Second Request for Provisional Measures submitted on 27 November 2025 by First Majestic Silver Corp. (“**First Majestic**” or the “**Claimant**”), under NAFTA Article 1134, Article 47 of the ICSID Convention and ICSID Arbitration Rule 39 (the “**Second Request**”).
2. The Claimant had previously submitted a first request for provisional measures on 4 January 2023 (the “**First Request**”). In its decision of 26 May 2023 (“**Decision on the First Request**”), the Tribunal granted one of the four provisional measures requested. In its Decision on the First Request, the Tribunal thoroughly examined the requirements for granting provisional measures under the ICSID Convention and Arbitration Rules, as well as under NAFTA. The Tribunal will therefore refer to its reasoning in the Decision on the First Request whenever relevant for deciding the Second Request.

II. Relevant Procedural History

3. On 1 March 2021, the Claimant submitted its Request for Arbitration (“**Request for Arbitration**”).
4. On 25 April 2022, the Claimant filed its Memorial on Jurisdiction and the Merits (“**Memorial**”).
5. On 25 November 2022, the Respondent filed its Counter-Memorial on Admissibility, Jurisdiction and the Merits (“**Counter-Memorial**”).
6. By letter dated 15 December 2022, the Claimant objected to certain information and statements contained in the Counter-Memorial and indicated that it would be seeking provisional measures from the Tribunal.

7. On 4 January 2023, the Claimant filed the First Request.
8. On 10 February 2023, the Respondent presented its Response to the First Request (the “**Response**”).
9. On 13 March 2023, the Tribunal held a hearing by video conference to clarify the respective positions of the Parties on the First Request.
10. On 3 April 2023, the Claimant informed the Tribunal that on 31 March 2023, it had served the Respondent with a NAFTA Notice of Intent (“**NOI**”) seeking recovery of VAT refunds in the amount of [REDACTED], by submitting a separate new ICSID dispute.
11. On 26 May 2023, the Tribunal issued its Decision on the First Request. The Tribunal decided as follows:

143. In light of the foregoing, the Tribunal unanimously decides as follows:

1. RECOMMENDS as provisional measure pursuant to Article 47 of the ICSID Convention, Rule 39 of the ICSID Arbitration Rules and Article 1134 of the NAFTA that the Respondent not block payments of VAT refunds owed by Mexican tax authorities to PEM since the date of the Claimant’s Request for Provisional Measures (4 January 2023) and those accruing to PEM in the future while the arbitration is pending, and that such payments be made into accounts to be indicated by PEM and to be maintained freely available to PEM;

2. REJECTS all other provisional measures requests by the Claimant; and

3. RESERVES for the Award the decision on the allocation of costs resulting from the Request.

12. On 19 June 2023, the Respondent filed a request for the revocation of the provisional measures, and, on 21 July 2023, the Claimant submitted a reply to the Respondent’s revocation request.

13. On 21 July 2023, ICSID registered a request for arbitration from the Claimant against the Respondent under Chapter 11 of NAFTA and Annex 14-C of the USMCA under ICSID Case No. ARB/23/28.
14. On 1 September 2023, the Tribunal rejected the Respondent's request for revocation of the provisional measures of 19 June 2023.
15. On 12 February 2024, the Respondent submitted a consolidation request under NAFTA Article 1126 (the "**Consolidation Request**") for ICSID proceedings ICSID Case No. ARB/21/14 and ICSID Case No. ARB/23/28.
16. On 29 February 2024, the Tribunal issued Procedural Order No. 6 ("**PO6**") concerning the suspension of the proceeding. The Tribunal decided as follows:
 - a) *The present proceeding is hereby suspended until the Consolidation Tribunal established under NAFTA Article 1126 assumes or declines jurisdiction over the present case in accordance with NAFTA Article 1126(2), or orders that the present proceedings be stayed in accordance with NAFTA Article 1126(9).*
 - b) *The procedural calendar, including the deadlines of 1 April 2024 for the Claimant's Reply and of 1 October 2024 for the Respondent's Rejoinder, is accordingly suspended.*
 - c) *The Tribunal invites the Respondent to inform the Tribunal and the Claimant by 7 March 2024 whether it has complied with the Tribunal's provisional measure granted by the Tribunal in its Decision on the Claimant's Request for Provisional Measures of 26 May 2023, para. 143.1, supplying evidence thereof, or, if not yet, how and by which date it intends to comply.*
 - d) *The suspension granted under (a) shall be effective from the date of the Respondent's reply to the Tribunal under (c) above.*
17. On 11 March 2024, within the extended deadline granted by the Tribunal, the Respondent submitted a response to the Tribunal's invitation in PO6, paragraph c), asserting its compliance with the Tribunal's Decision on the First Request. On 25 March 2024, the Claimant's submitted a reply to the Respondent's letter of 11 March 2024.

18. By letter to the Parties of 29 March 2024, the Tribunal examined the Parties' letters of 11 March 2024 and 25 March 2024, and clarified that, in order to fully comply with the Decision on the First Request, the "*Respondent [had to] make the amounts of VAT refunds paid to PEM from 4 January 2023 to July 2023 on its blocked account at Banamex freely available to PEM, by depositing those amounts on PEM's freely accessible account at Banorte or otherwise.*"
19. By letter of 10 April 2024, the Claimant informed the Tribunal that the Respondent had allegedly failed to fully comply with the Tribunal's Decision on the First Request.
20. On 1 May 2024, the Claimant informed the Tribunal that on 25 April 2024 the Respondent confirmed its intention to fully comply with the Decision on the First Request.
21. On 6 May 2024, the Tribunal urged the Respondent to complete the necessary steps and invited the Parties to inform the Tribunal of the completion of this process.
22. By letter of 29 May 2024, the Claimant informed the Tribunal that despite the Respondent's expressed intentions, it had allegedly failed to fulfill the Tribunal's Decision on the First Request.
23. On 4 June 2024, the Tribunal urged again the Respondent "*to complete the steps needed to release to PEM the amounts of the VAT refunds pertaining to the months from January to July 2023 in full compliance of the Decision and report promptly to the Tribunal.*"
24. By letter of 7 October 2024, the Claimant informed the Tribunal of the Respondent's alleged violation to the Tribunal's Decision on the First Request by freezing PEM's Banorte account and requested that the Respondent be directed to "*immediately lift the freeze, allow PEM full access to the funds currently in the Banorte account, and permit PEM the unrestricted use of the bank account in the future.*"¹

¹ Claimant's letter of 7 October 2024, p. 2.

25. On 21 October 2024, the Respondent observed that the issues raised by the Claimant in its letter of 7 October 2024 were under study before the consolidation tribunal established pursuant to NAFTA Article 1126 (the “**Consolidation Tribunal**”).
26. On 28 July 2025, the Consolidation Tribunal issued an Order rejecting the Respondent’s Consolidation Request of 12 February 2024 (“**Order**”). The Consolidation Tribunal also lifted the suspension of the present arbitration.²
27. By letter of 19 August 2025, the Claimant informed the Tribunal of the alleged continued non-compliance by the Respondent of the Tribunal’s Decision on the First Request. On 9 September 2025, pursuant to the Tribunal’s invitation of 20 August 2025, the Respondent submitted its comments on the Claimant’s letter of 19 August 2025.
28. On 7 September 2025, the Tribunal issued Procedural Order No. 7 (“**PO7**”) declaring the resumption of the present proceedings.
29. On 22 September 2025, the Tribunal issued Procedural Order No. 8 (“**PO8**”) concerning the provisional measures. The Tribunal ordered as follows:

21. In view of the above, the Tribunal:

A. Confirms that full compliance with its Order requires that all monthly VAT refunds by SAT in favor of PEM, already effected or to be made in the future while the present arbitration is pending, must be freely available to PEM, by SAT depositing or transferring them to accounts to be maintained freely available to PEM.

B. Accordingly:

(i) The Respondent must promptly ensure that the amount of about [REDACTED] corresponding to the VAT refunds made by SAT to PEM in August, September and October 2023, currently blocked on PEM’s Banamex account, be made available to PEM;

² The Order was submitted in the present arbitration on 30 July 2025 pursuant to a request by Tribunal.

(ii) The blocking of PEM's Banorte account on 29 August 2024, which was opened by PEM for the purpose of receiving VAT refunds from SAT, is contrary to the Order. This blocking must be appropriately remedied by the Respondent (through SAT or otherwise) to ensure that the amounts of VAT refunds deposited therein, as well as any future VAT refund payments, are freely available to PEM.

30. On 14 October 2025, the Claimant provided the Tribunal with a copy of its letter to the Respondent demanding the Respondent to take “*all necessary steps to comply with the Tribunal's directives as set out in PO No. 8 and its Decision of May 26, 2023.*”³
31. On 27 November 2025, the Claimant filed its Second Request, together with the Third Expert Report of [REDACTED] (“**Third [REDACTED] Expert Report**”).
32. On 1 December 2025, the Tribunal invited the Respondent to submit its response to the Second Request by 15 December 2025.
33. On 4 December 2025, the Claimant filed the witness statement of [REDACTED] to supplement the Second Request, together with an index, factual exhibits C-0109 to C-0117, and legal authorities CL-0128 to CL-0137.
34. On 12 December 2025, the Tribunal granted the Respondent an extension until 22 December 2025 to file its response to the Second Request.
35. On 22 December 2025, the Respondent submitted its Reply to the Claimant's Second Request for Provisional Measures (“**Reply**”), together with the second witness statement of [REDACTED] and a consolidated index.

³ Claimant's letter of 14 October 2025, p. 2.

III. The Parties' Positions⁴

A. The Claimant's Position

(i) The Claimant's presentation of relevant facts

36. The Claimant explains that:

[t]he request concerns the Servicio de Administración Tributaria (“SAT”)’s measures related to the imminent collection from Primero Empresa Minera, S.A. de C.V. (“PEM”) of ██████████ ██████████, which it asserts are PEM’s tax liabilities for fiscal year 2012 (“2012 Tax Reassessment”).⁵

37. The Claimant goes on as follows:

The SAT’s imminent collection efforts have been instigated by the recent Suprema Corte de Justicia de la Nación, Supreme Court of Mexico (“Supreme Court”) decision, made on October 30, 2025, refusing PEM’s request to be heard in order to advance constitutional arguments concerning the illegality of the 2012 Tax Reassessment. The Supreme Court, by denying PEM’s request to be heard, did not address the merits of the dispute between the parties concerning the legally binding nature of the Advance Pricing Agreement (“APA”).⁶

38. As a consequence, according to the Claimant:

The Supreme Court’s decision leaves PEM without any further remedies in Mexican courts and precludes PEM from establishing the illegality of the 2012 Tax Reassessment before Mexico’s highest court. Had the appeal been admitted, PEM would have argued that the ongoing validity of the APA—still in effect and not yet set aside pursuant to the Juicio de Lesividad proceeding—renders the 2012 Tax Reassessment fundamentally flawed because the SAT disregarded the APA’s revenue calculation methodology for PEM’s exports of its mined silver.⁷

⁴ This summary does not intend to be a detailed and exhaustive description of all of the Parties’ arguments. Its objective is merely to establish the general context for this decision.

⁵ Second Request, para. 2 (footnotes omitted).

⁶ Second Request, para. 3.

⁷ Second Request, para. 4.

39. According to the Claimant:

[t]he Supreme Court’s refusal to hear PEM’s appeal in respect of the 2012 Tax Assessment has cleared the way for the SAT to immediately proceed with its collection efforts in relation to the 2012 Tax Assessment. The SAT has finalized tax reassessments for the years 2010 through 2017, totaling approximately [REDACTED], in all cases by ignoring the existence of the APA. The SAT intends to initiate its collection actions, starting with about 20 percent of this sum—[REDACTED]—which it asserts is owed for PEM’s 2012 fiscal year, with the remaining years to follow.⁸

40. The Claimant, therefore, requests “immediate interim relief (**‘Stay Request’**) pending the final award of this Tribunal (**‘Stay’**), in connection with any attempts by the SAT to collect from PEM any monies in respect of the 2012 Tax Reassessment.”⁹

41. According to the Claimant:

The Stay would preserve the Tribunal’s exclusive jurisdiction, maintain the status quo of the dispute, protect the Claimant’s substantive and procedural rights, and avoid an aggravation of the dispute, without prejudicing the Respondent. Absent a Stay, the dispute will be severely aggravated and result in substantially greater harm being suffered by the Claimant and PEM.¹⁰

42. The Claimant relies as evidence of the dramatic impact that the SAT enforcement of the 2012 Tax Reassessment would have on its subsidiary PEM on the Third [REDACTED] Expert Report. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ Second Request, para. 9.

⁹ Second Request, para.10.

¹⁰ Second Request, paras.11-12. See also para. 27: “The collection of the 2012 Tax Reassessment is imminent as PEM has exhausted domestic remedies for challenging this reassessment.”

¹¹ Second Request, para. 13 referring to the Third Expert Report of [REDACTED], dated 25 November 2025 (“**Third [REDACTED] Expert Report**”) filed by the Claimant as an annex and in support of its Second Request, para. 42.

(ii) Claimant's legal arguments

43. The Claimant first recalls the “Applicable Standard” for the granting of provisional measures in the present case.¹² As to the Tribunal’s authority to grant a request, the Claimant refers first to NAFTA Article 1134, which provides:

*A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.*¹³

44. Therefore, according to the Claimant:

*A NAFTA Tribunal's power thus extends to protecting both “the rights of a disputing party,” i.e., protection of substantive rights, and to safeguard and make fully effective “the Tribunal's jurisdiction,” i.e., protection of procedural rights, including the right to be heard by the Tribunal pursuant to the chosen international arbitration rules.*¹⁴

45. As to the ICSID Convention and Arbitration Rules, which govern these proceedings, the Claimant refers to Article 47 of the ICSID Convention which “*add similar standards:*”¹⁵

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

¹² Second Request, paras. 55-60.

¹³ NAFTA Art. 1134, January 1, 1994 (CL-0001).

¹⁴ Second Request, para. 56.

¹⁵ Second Request, para. 57.

46. According to the Claimant, ICSID tribunals have interpreted Article 47 to mean that provisional measures may be granted where “*they are necessary to preserve a party’s rights and urgent in order to avoid irreparable harm*” or “*grave or serious harm.*”¹⁶

47. The Claimant further recalls Arbitration Rule 39 implementing Article 47 as follows:

(1) At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.

(2) The Tribunal shall give priority to the consideration of a request made pursuant to paragraph (1).

(3) The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.

(4) The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.

48. The Claimant further states that:

Applying these same standards previously in resolving the Claimant’s first request for provisional relief, this Tribunal ruled, in its PM Order, that the following elements must be considered when deciding whether to grant a provisional measures order:

(a) that the Tribunal has prima facie jurisdiction;

(b) that the provisional measures are aimed at protecting, while the dispute is pending, either a substantive right of the requesting party [;]

(c) or a procedural right, notably as to the integrity of the arbitral process, the exclusivity of the ICSID arbitration, and/or are aimed at avoiding the aggravation of the

¹⁶ Second Request, para. 58 (footnotes omitted).

dispute (maintaining the status quo while the dispute is pending);

(d) from actions by the other party that are likely to cause an actual or imminent serious (irreparable) harm to the above rights, so that the requested measures appear to be necessary (proportionate) and urgent.

(e) Moreover, the measures are by their nature provisional, i.e., temporary, and must not prejudice the final decision of the dispute.¹⁷

49. The Claimant argues that all requirements for the granting of the stay are met. In section Section III.B (“Application of the Standard”) it applies the above standards to the facts of the case, alleging an imminent risk that enforcement of the 2012 Tax Reassessment by the SAT would cause irreparable damage to PEM during the pendency of this arbitration.¹⁸

50. Specifically, the Claimant applies the above standards to the facts and argues that:

(1) The Tribunal has *prima facie* jurisdiction;

(2) The provisional measures are aimed at preserving the Claimant’s substantive and procedural rights; and

(3) The provisional measures are necessary, urgent, and proportionate because the Respondent’s actions will cause serious and imminent harm to the Claimant’s rights.

51. The Claimant concludes at paragraph 126 by requesting this Tribunal to:

1. Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending issuance of the Tribunal’s Final Award;

¹⁷ Second Request, para. 60, quoting the Decision on the First Request, para. 93.

¹⁸ See Second Request, paras. 62-123. The Tribunal will refer to specific paragraphs of this section of Claimant’s Second Request in the following paragraphs of this Decision as far as relevant.

2. *Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending resolution of this Request for Provisional Measures; and*

3. *Recommend such other remedy as the Tribunal based on the Claimant's request or based on its own determination considers appropriate in the present circumstances.*

B. The Respondent's Position

(i) The Respondent's presentation of relevant facts

52. The Respondent strongly objects to the Claimant's Second Request in fact and in law. In its Reply (*Respuesta*), the Respondent confirms the Claimant's statements that PEM has exhausted all available recourses within the Mexican legal system to challenge the tax assessment issued in respect of PEM's taxes for 2012. The Respondent states that the assessment was made in conformity with applicable provisions in the matter and that PEM's recourses have been examined in conformity with due process principles which afford to all Mexican taxpayers ample means to submit their complaints.

53. In this respect, the Respondent states that:

Resulta igualmente incuestionable que la totalidad del sistema de control jurisdiccional interno ha confirmado la legalidad y exigibilidad del Crédito Fiscal determinado a cargo de PEM, correspondiente al ejercicio 2012. Autoridades administrativas, tribunales especializados y órganos del Poder Judicial de la Federación han examinado de manera exhaustiva los actos de la autoridad fiscal y han concluido, de forma consistente, que PEM adeuda pagos al fisco mexicano. En este contexto, es indispensable recordar que este Tribunal Arbitral no funge como una corte supranacional de apelación, ni está llamado a sustituir el criterio de los tribunales nacionales ni a reabrir controversias fiscales definitivamente resueltas conforme al derecho mexicano.¹⁹

54. According to the Respondent, the APA (*Advance Pricing Agreement*, in Spanish *RMPT - Resolución en Materia de Precios de Transferencia*) which was annulled in the *Juicio de*

¹⁹ Reply, para. 2.

Lesividad, concerned only PEM's revenues of 2010. Therefore, the APA/RMPT is immaterial for PEM's tax assessment for 2012.²⁰

55. As a consequence, according to the Respondent, the tax claim of the Mexican tax authorities against PEM concerning 2012 are properly final and enforceable:

*Por otro lado, la ejecución de un crédito fiscal firme y no garantizado no solo es plenamente legal, sino que constituye el ejercicio regular y obligatorio de las atribuciones que la ley impone a la autoridad fiscal. Por el contrario, si el SAT se abstuviera de ejecutar un crédito fiscal firme, podría incurrir en una omisión contraria al marco jurídico interno, con potenciales responsabilidades administrativas para los servidores públicos involucrados.*²¹

56. The Respondent reports that after the final decision of the Supreme Court of 25 October 2025, a meeting took place on 12 November 2025 between SAT and PEM with a view to settle the matter. According to Respondent:

*En dichas reuniones, PEM expuso su interés en pagar los créditos fiscales adeudados, así como en analizar esquemas de atención compatibles con su situación operativa, siempre reconociendo la existencia de las determinaciones fiscales y sin desconocer la autoridad del Estado mexicano para exigir su cumplimiento.*²²

57. The Respondent concludes that:

*Frente a este contexto, resulta abiertamente contradictorio e insostenible que la Demandante presente ahora una Segunda Solicitud de Medidas Provisionales ante este Tribunal Arbitral, pretendiendo presentar al Crédito Fiscal 2012 —y las acciones de cobro del SAT— como actos arbitrarios, coercitivos o ilegítimos.*²³

²⁰ Reply, paras. 21-29.

²¹ Reply, para. 61.

²² Reply, para. 63.

²³ Reply, para. 65.

(ii) The Respondent's legal arguments

58. The Respondent agrees generally with the Claimant on the legal standards applicable to the granting of provisional measures in the present case. The Respondent also quotes the summing-up by the Tribunal in its Decision on the First Request, but considers that these standards are not met by the Claimant in its Second Request. Moreover, the Respondent points out to the additional requirement of NAFTA Article 1134 (referred to in the Tribunal's Decision on the First Request at paragraph 94) which the Claimant has not quoted:

(93) Those requirements are (a) that the Tribunal has prima facie jurisdiction; (b) that the provisional measures are aimed at protecting, while the dispute is pending, either a substantive right of the requesting party, (c) or a procedural right, notably as to the integrity of the arbitral process, the exclusivity of the ICSID arbitration, and/or are aimed at avoiding the aggravation of the dispute (maintaining the status quo while the dispute is pending); (d) from actions by the other party that are likely to cause an actual or imminent serious (irreparable) harm to the above rights, so that the requested measures appear to be necessary (proportionate) and urgent. Moreover, the measures are by their nature provisional, i.e., temporary, and must not prejudice the final decision of the dispute.

(94) In this arbitration under NAFTA, an additional condition for granting interim measures under Article 1134 NAFTA is that such measures must not "enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117."²⁴

59. Moreover, according to the Respondent, the Tribunal lacks jurisdiction (requirement (a) above) to grant the stay requested by the Claimant in light of the carve-out for tax measures from the subject matter of investment disputes under NAFTA Chapter 11 set forth in NAFTA Article 2103 "Taxation":

Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.²⁵

²⁴ Reply, paras. 68-69.

²⁵ Reply, paras. 72-74. The text of the subsequent paragraphs of Article 2103 are omitted in the text above because they are not relevant and the Respondent only refers to the first paragraph.

60. In this respect, the Respondent specifies that:

*Como explicó México en la respuesta a la primera solicitud de medidas provisionales de la Demandante, debe hacerse una clara distinción entre la jurisdicción del Tribunal para resolver la controversia respecto de su jurisdicción para ordenar una medida provisional. Si bien pudiese decirse que prima facie el Tribunal tiene jurisdicción, como ya lo determinó, el Tribunal no tiene la facultad de emitir una medida provisional en materia fiscal, ni temporalmente en lo que decide la solicitud de la Demandante, ni de manera provisional hasta que se resuelva el arbitraje.*²⁶

61. As to the other requirements for the granting of the provisional measures requested by the Claimant, the Respondent submits that none is satisfied. In particular, the Respondent argues that there is no risk of harm to any of the Claimant's protected right, whether with respect to (1) the alleged right to preserve the APA Resolution, (2) the alleged right to preserve and protect its investment, (3) its alleged rights based on the NAFTA, (4) the right to the exclusivity of the ICSID proceeding, or (5) the right that the dispute not be aggravated. In addition, the Respondent contends that the stay sought is neither necessary nor urgent, and would be disproportionate in light of Mexico's interest and need to collect its tax credits.²⁷

62. Finally, the Respondent invokes as a bar to the granting of the provisional measure requested by the Claimant the prohibition set forth in the second sentence of NAFTA Article 1134: "*Un tribunal no podrá ordenar el embargo, ni la suspensión de la aplicación de la medida presuntamente violatoria a la que se refiere el Artículo 1116 ó 1117.*"²⁸

63. The Respondent points out that the applicability of this NAFTA limitation in respect of the granting of provisional measure has been acknowledged by the Tribunal in its Decision on the First Request.²⁹ The Respondent refers to a number of decisions of ICSID tribunals under NAFTA that have applied this limitation to deny the suspension of a measure that

²⁶ Reply, paras. 72-73 (footnotes omitted).

²⁷ See Reply, paras. 83-219.

²⁸ Reply, para. 220-223. The full English text of NAFTA Article 1134 quoted by the Claimant at para. 222 of its Second Request is reproduced in para. 43 above.

²⁹ Reply, para. 227, referring to para. 94 of the Decision on the First Request, quoted above at para. 58.

was claimed to be in breach of NAFTA. A NAFTA tribunal cannot enjoin the application of the measures which are alleged to constitute a breach to NAFTA, making it “*clear that the rights in dispute cannot be the subject matter of the provisional measures.*”³⁰

64. In this connection, the Respondent notes that the Claimant has not addressed the provision at issue in its Second Request, while the case law invoked by the Claimant does not originate from NAFTA tribunals but from tribunals operating under different investment treaties that do not include such a provision.³¹
65. The Respondent considers that the Tribunal cannot grant the suspension of the SAT’s assessment of PEM’s taxes for 2012 because such assessment is challenged in the merits by the Claimant as being in breach of the Claimant’s rights under NAFTA.³² To support this conclusion the Respondent refers to a number of statements made by the Claimant in its briefs as well as to statements included in its expert witnesses reports.
66. In the subsequent paragraphs of its Reply the Respondent has quoted to this effect the following statements by the Claimant and its expert witnesses:

(244) First Majestic indicó en su Solicitud de Arbitraje que:

First Majestic’s dispute with the Government of Mexico is in respect of a series of measures taken and not taken, for which Mexico is responsible, and which have and continue to affect First Majestic and PEM materially and adversely. These measures have caused both entities to incur damages and losses.

These measures and failure to take certain measures include: illegally repudiating the APA issued to PEM which continues to remain legally binding on the SAT in relation to the 2010 to 2014 years; attempting to

³⁰ Reply, paras. 234-237, referencing *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Procedural Order No. 2, 3 May 2000, para. 5 (RL-0170), and G. Kaufmann-Kohler et. al, *Interim Relief in Investment Treaty Arbitration*, in K. Yannaca-Small, *Arbitration Under International Investment Agreements*, OUP (2018), para. 24.28 (RL-0104).

³¹ Reply, paras. 224-227.

³² Reply para. 253.

*retroactively nullify the APA based on improper grounds; issuing unlawful retroactive tax reassessments; [...]*³³

(245) *Incluso, en su Memorial de Demanda, First Majestic indicó lo siguiente:*

158. A non-exhaustive list of measures that form part of the dispute with the Respondent and provide the basis for the claim against the Respondent include:

[...]

c) issuing unlawful retroactive Reassessments.

[...]

f) engaging in unlawful collection methods that violate Mexico's own laws and the Mexican Constitution.

h) refusing to suspend its collection of amounts purportedly claimed by Mexico to be taxes, penalties and interest notwithstanding the request for the MAPs filed by PEM.

[...]

196. As explained above, the dispute centers around several adverse measures adopted by Mexico, including (i) Mexico's repudiation of the APA, (ii) its illegal efforts to collect unlawful Reassessments, (iii) its unlawful money laundering investigation against PEM, (iv), its unlawful criminal proceedings and threat of proceedings against PEM and its officials, (v) its public shaming of First Majestic in the Press and (vi) the SAT's refusal to engage in the mutual agreement procedure.

[...]

407. The reassessments for the 2010-2012 fiscal years—while the 2013 and 2014 years were under audit—that

³³ Reply, para. 244, citing Request for Arbitration, paras. 86-87 (emphasis added).

*followed were an assault on both PEM and the rule of law.*³⁴

(246) Además, el [REDACTED] indicó en su primer informe:

5. [...] *The actions of Respondent which are alleged to be in breach of these treaties (collectively the "Measures") include:*

[...]

*substantial reassessments ("Reassessments") of amounts claimed by the SAT to be income taxes (as well as amounts levied as interest and penalties) owed by PEM in Mexico for the period 2010 – 2013, the ongoing tax audits and proposed reassessments for 2014 and 2015, potential tax audits/reassessments for subsequent years, and furthermore in pursuing the collection of the amounts as taxes (plus interest and penalties) while blocking PEM from accessing the applicable domestic and international law dispute resolution mechanisms*³⁵

67. At paragraphs 248-249 the Respondent states in the same vein that:

(248) *Incluso, por si hubiera cualquier tipo de duda, la Demandante en su Segunda Solicitud de Medidas Provisionales reconoce expresamente que el Crédito Fiscal 2012 es objeto de esta controversia:*

At the core, the issue in the present dispute is whether Respondent's 2010-2017 tax reassessments, which ignored the binding terms of the APA, breached numerous investment protections under NAFTA. The Claimant's claims include breaches of Article 1102 (National Treatment); Article 1103 (Most-Favored Nation Treatment); Article 1104 (Standard of Treatment); Article 1105 (Minimum Standard of Treatment); Article 1108 (Transfers); and Article 1110 (Expropriation).

³⁴ Reply, para. 245, citing Claimant's Memorial, paras. 158, 196, 407 (emphasis added).

³⁵ Reply, para. 246, citing the First Expert Report of [REDACTED], 25 April 2022, para. 5, and referring to the Third [REDACTED] Expert Report, para. 3.

*(249) En otras palabras, está totalmente claro que el Crédito Fiscal 2012 está siendo reclamado en este arbitraje.*³⁶

68. And at paragraph 250:

(250) Además, la Segunda Solicitud de Medida Provisional de la Demandante indica:

*Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending issuance of the Tribunal's Final Award.*³⁷

69. The Respondent concludes at paragraph 251 as follows:

Es decir, la Demandante está solicitando la suspensión de la aplicación o ejecución de una medida reclamada: el Crédito Fiscal 2012. Así, dado que la Demandante está claramente solicitando a este Tribunal que no se aplique dicho crédito fiscal, la medida provisional encuadra perfectamente en la prohibición del Artículo 1134 del TLCAN.

70. The Respondent concludes therefore as to its objection based on NAFTA Article 1134 at paragraph 256 that “[e]n conclusión, el Tribunal no tiene facultades para recomendar la medida provisional solicitada.”

71. The final requests (“*Petitorios*”) of the Respondent in its Reply are that the Tribunal:

i. Determine que no tiene jurisdicción para emitir la medida provisional solicitada.

ii. Desestime en su totalidad la Segunda Solicitud de Medidas Provisionales porque la Demandante no demostró un derecho susceptible de ser protegido mediante las medidas solicitadas, y mucho menos demostró su supuesto daño, necesidad, urgencia y proporcionalidad.

iii. Se determine una fecha para llevar a cabo una audiencia, previo a la decisión sobre medidas provisionales, de conformidad con la Regla 32 de Arbitraje.

³⁶ Reply, paras. 248-249, citing the Claimant’s Second Request, para. 76 (emphasis added).

³⁷ Reply, para. 250, citing the Claimant’s Second Request, para. ¶ 126.1.

iv. *Tener a salvo los derechos de la Demandada para refutar, en el momento procesal oportuno, varias alegaciones fácticas y legales expresadas en la Segunda Solicitud de Medidas Provisionales.*

v. *Ordene a la Demandante indemnizar a la Demandada por los costos y gastos incurridos en esta fase procesal.*

IV. The Tribunal's Analysis

(i) Premises

72. In its Decision on the First Request, the Tribunal has already outlined the requirements under the ICSID Convention, the Arbitration Rules provisions and NAFTA Article 1134 for ordering or recommending provisional measures as follows:

(93) Those requirements are (a) that the Tribunal has prima facie jurisdiction; (b) that the provisional measures are aimed at protecting, while the dispute is pending, either a substantive right of the requesting party, (c) or a procedural right, notably as to the integrity of the arbitral process, the exclusivity of the ICSID arbitration, and/or are aimed at avoiding the aggravation of the dispute (maintaining the status quo while the dispute is pending); (d) from actions by the other party that are likely to cause an actual or imminent serious (irreparable) harm to the above rights, so that the requested measures appear to be necessary (proportionate) and urgent. Moreover, the measures are by their nature provisional, i.e., temporary, and must not prejudice the final decision of the dispute.

(94) In this arbitration under NAFTA, an additional condition for granting interim measures under Article 1134 NAFTA is that such measures must not “enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117.

73. The Parties agree on the requirements listed in paragraph 93 of the Decision on the First Request although they dissent as to whether they are met with respect to the suspension of the enforcement of the 2012 Tax Reassessment requested by the Claimant in its Second Request. Moreover, while the Respondent refers also to the specific additional requirement set forth in NAFTA Article 1134 quoted above, the Claimant has not addressed such provision

74. In its Reply, the Respondent has raised also the requirement of NAFTA Article 2103.1, that “[e]xcept as set out in this Article, nothing in this Agreement shall apply to taxation measures.” The Respondent claims that the Tribunal is prevented from granting the suspension of the tax enforcement that the Claimant is seeking as a provisional measure in its Second Request, because the enforcement of the 2012 Tax Reassessment is a taxation measure which is excluded from the coverage of the NAFTA.
75. The Tribunal considers it appropriate to start its analysis by addressing the two main objections raised by the Respondent against the Claimant’s Second Request. The first objection submitted by Respondent is based on NAFTA Article 2103.1 which excludes tax measures from the coverage of NAFTA. The second such objection is based on the second sentence of NAFTA Article 1134, according to which provisional measures must not “*enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117.*”
76. The presence of just one of these impediments would prevent the Tribunal from granting the provisional measures sought by the Claimant. The Respondent has cast these obstacles as a lack of jurisdiction. Possibly, it might be more appropriately defined as a lack of authority of the Tribunal to grant such provisional measures, notwithstanding its *prima facie* jurisdiction to pass upon the dispute before it.³⁸ Whatever approach or definition is preferred, the incompatibility of the provisional measure sought with either NAFTA Article 2103.1 or Article 1134 (second sentence) would inevitably lead to the rejection of the Second Request.
77. For reasons of judicial economy, the Tribunal will start its analysis by examining the application of NAFTA Article 1134, second sentence, that is, whether the provisional measure sought by the Claimant would “*enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117.*” Should this be the case, the

³⁸ As to the Tribunal having *prima facie* jurisdiction notwithstanding the objection raised by the Respondent, to be decided in due time in accordance with the procedural calendar, see Decision on the First Request, para.106. This is acknowledged by the Respondent in its Reply, paras. 72-73.

Tribunal must reject the Claimant's Second Request since the provision prevents the Tribunal from granting such a measure.

(ii) Reasons

78. For the reasons stated hereafter, the Tribunal has come to the conclusion that granting the provisional measure sought by the Claimant in its Second Request would run against the prohibition of the second sentence of NAFTA Article 1134. The Tribunal lacks therefore the power to grant such provisional measure and the Claimant's request must accordingly be rejected.
79. The Tribunal already examined the meaning of the prohibition spelled out in the second sentence of NAFTA Article 1134 against provisional measures that would "*order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117*" in its Decision on the First Request³⁹
80. In recommending the Respondent "*...not to block payments of VAT tax refunds owed by Mexican tax authorities to PEM ...*", the Tribunal considered "*that the above recommendation is not prevented by the prohibition of Article 1134 NAFTA against provisional measures that would 'enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117.'* This is because the denial by SAT of PEM's free access to future VAT refunds is not a measure challenged by the Claimant in its Request for Arbitration nor discussed in its Memorial."⁴⁰

³⁹ "Article 1116: *Claim by an Investor of a Party on Its Own Behalf*. 1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under: (a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the investor has incurred loss or damage by reason of, or arising out of, that breach [...]." "Article 1117: *Claim by an Investor of a Party on Behalf of an Enterprise*. 1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under: (a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach [...]." (NAFTA Articles 1116 and 1117, January 1, 1994 (CL-0001)).

⁴⁰ Decision on the First Request, paras. 134-135.

81. In respect of the Second Request, the Tribunal considers instead that the provisional measure requested by the Claimant would enjoin the Respondent from applying a measure that First Majestic claims to be in breach of its rights under NAFTA, specifically Articles 1116 and 1117.
82. This results from comparing the object of the provisional measure sought by the Claimant with Mexico's measures that it claims have breached its rights under NAFTA. As to the first prong, in its Second Request the Claimant asks the Tribunal to:
1. *Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending issuance of the Tribunal's Final Award;*
 2. *Recommend that the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment, pending resolution of this Request for Provisional Measures; [...]*⁴¹
83. As recalled above, the Claimant explains at length in its Second Request that the SAT is likely to initiate at any time enforcement action against PEM to collect such 2012 taxes resulting from the reassessment (which it considers being in breach of its rights under NAFTA), since PEM has exhausted all available recourses in Mexico against it.⁴² More generally, the Claimant challenges also other tax assessments or reassessments for the years from 2010 to 2017, although it has requested provisional measures only in respect of 2012.⁴³
84. The above request that “*the Respondent immediately suspend any measures to compel payment related to the 2012 Tax Reassessment*” must be compared with the claims in the merits that First Majestic has submitted in its Request for Arbitration and in its Memorial.

⁴¹ Second Request, para. 126 (emphasis added).

⁴² See above paras. 37-39, and the Second Request, paras. 2-12, 27.

⁴³ See para. 40 above and the Claimant's statements in para. 9 of the Second Request: [REDACTED]

85. In its Request for Arbitration, the Claimant stated:

(86) First Majestic's dispute with the Government of Mexico is in respect of a series of measures taken and not taken, for which Mexico is responsible, and which have and continue to affect First Majestic and PEM materially and adversely. These measures have caused both entities to incur damages and losses.

(87) These measures and failure to take certain measures include: illegally repudiating the APA issued to PEM which continues to remain legally binding on the SAT in relation to the 2010 to 2014 years; attempting to retroactively nullify the APA based on improper grounds; issuing unlawful retroactive tax reassessments; seeking to collect amounts purportedly as taxes, penalties and interest without any legal basis [...].⁴⁴

86. In its Memorial, the Claimant stated the following:

158. A non-exhaustive list of measures that form part of the dispute with the Respondent and provide the basis for the claim against the Respondent include:

[...]

c) issuing unlawful retroactive Reassessments

[...]

f) engaging in unlawful collection methods that violate Mexico's own laws and the Mexican Constitution.

[...]

h) refusing to suspend its collection of amounts purportedly claimed by Mexico to be taxes, penalties and interest notwithstanding the request for the MAPs filed by PEM.

[...]

⁴⁴ Request for Arbitration, paras. 86-87 (emphasis added).

196. As explained above, the dispute centers around several adverse measures adopted by Mexico, including (i) Mexico's repudiation of the APA, (ii) its illegal efforts to collect unlawful Reassessments, (iii) its unlawful [REDACTED] against PEM, (iv), its unlawful [REDACTED] and threat of proceedings against PEM and its officials, (v) its public shaming of First Majestic in the Press and (vi) the SAT's refusal to engage in the mutual agreement procedure.

407. The reassessments for the 2010-2012 fiscal years—while the 2013 and 2014 years were under audit—that followed were an assault on both PEM and the rule of law [...].⁴⁵

87. In support of its claim against the tax reassessment by Mexican authorities for the years 2010-2017, including that for 2012 whose suspension First Majestic seeks in its Second Request, the Claimant has introduced as evidence the First Report of its expert witness [REDACTED] who states:

5. [...] *The actions of Respondent which are alleged to be in breach of these treaties (collectively the "Measures") include: [...]*

substantial reassessments ("Reassessments") of amounts claimed by the SAT to be income taxes (as well as amounts levied as interest and penalties) owed by PEM in Mexico for the period 2010 – 2013, the ongoing tax audits and proposed reassessments for 2014 and 2015, potential tax audits/reassessments for subsequent years, and furthermore in pursuing the collection of the amounts as taxes (plus interest and penalties) while blocking PEM from accessing the applicable domestic and international law dispute resolution mechanisms.⁴⁶

88. Conclusively, a comparison between the provisional measure requested by the Claimant in its Second Request (suspension of the 2012 PEM tax reassessment) and the claims of breach of its rights under NAFTA made by the Claimant in the merits in this arbitration shows that the Claimant asks in its Second Request the suspension of one of the

⁴⁵ Claimant's Memorial, paras. 158, 196, 407 (emphasis added).

⁴⁶ First Expert Report of [REDACTED], 25 April 2022, para. 5 (emphasis added).

Respondent's measures which it challenges in this arbitration as being in breach of its rights under NAFTA, namely PEM's tax reassessment for 2012.

89. The provisional measure sought by the Claimant cannot therefore be granted by the Tribunal because of the prohibition set forth in the second sentence of NAFTA Article 1134.
90. Any doubt in this respect, should there remain any, is dispelled by the explicit statements as to the object of its principal claims in the merits made by First Majestic in its Second Request:

At the core, the issue in the present dispute is whether Respondent's 2010-2017 tax reassessments, which ignored the binding terms of the APA, breached numerous investment protections under NAFTA. The Claimant's claims include breaches of Article 1102 (National Treatment); Article 1103 (Most-Favored Nation Treatment); Article 1104 (Standard of Treatment); Article 1105 (Minimum Standard of Treatment); Article 1108 (Transfers); and Article 1110 (Expropriation).⁴⁷

The Claimant thereby confirms that the Respondent's measure whose enforcement it is seeking to suspend is "[a]t the core of the present dispute".

91. Since the Tribunal rejects the Claimant's suspension request on the basis that NAFTA Article 1134 does not allow the suspension of PEM's 2012 Tax Reassessment, the Tribunal need not consider the Respondent's other objections. As explained in para. 76 above, the lack of any single requirement under the NAFTA or ICSID provisions prevents the Tribunal from granting the Claimant's requested provisional measures.

⁴⁷ Second Request, para. 76 (emphasis added).

V. Decision

92. For the above reasons, the Tribunal unanimously decides as follows:

- (1) Rejects the Claimant's Second Request;
- (2) Reserves to the Award the decision on the allocation of costs resulting from the Claimant's Second Request.



Prof. Stanimir A. Alexandrov
Arbitrator



Prof. Yves Derains
Arbitrator



Prof. Giorgio Sacerdoti
President

Dated: 29 January 2026