

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT
and
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
FRANCE AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE
RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS
and
THE AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED
MEXICAN STATES ON THE RECIPROCAL PROMOTION AND PROTECTION OF
INVESTMENTS
and
*EL ACUERDO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS MEXICANOS Y EL
GOBIERNO DE LA REPUBLICA ARGENTINA PARA LA PROMOCIÓN Y PROTECCIÓN
RECÍPROCA DE LAS INVERSIONES***

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

- between -

**CARLOS SASTRE AND OTHERS
(the “Claimants”)**

and

**THE UNITED MEXICAN STATES
(the “Respondent”)**

ICSID Case No. UNCT/20/2

PROCEDURAL ORDER NO. 1

Tribunal

Prof. Eduardo Zuleta (Presiding Arbitrator)
Dr. Charles Poncet
Mr. Christer Söderlund

Secretary of the Tribunal
Ms. Geraldine R. Fischer

May 28, 2020

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Introduction

The first session of the Tribunal was held on May 26, 2020 by videoconference.

Participating in the KUDO videoconference were:

Members of the Tribunal:

Prof. Eduardo Zuleta, Presiding Arbitrator

Dr. Charles Poncet, Arbitrator

Mr. Christer Söderlund, Arbitrator

ICSID Secretariat:

Ms. Geraldine R. Fischer

Participating on behalf of the Claimants:

Counsel:

Mr. Carlos F. Concepcion, Partner, Shook, Hardy & Bacon LLP

Mr. Ricardo A. Ampudia, Of Counsel, Shook, Hardy & Bacon LLP

Mr. Giovanni Angles, Of Counsel, Shook, Hardy & Bacon LLP

Ms. Alicia M. Menendez, Of Counsel, Shook, Hardy & Bacon LLP

Mr. Erick Rodriguez, Paralegal, Shook, Hardy & Bacon LLP

Parties:

Mr. Carlos Esteban Sastre

Mr. Renaud Jacquet

Mr. Graham Alexander

Ms. Monica Galán Ríos

Mr. Eduardo Nuno Vaz Osorio dos Santos Silva

Participating on behalf of the Respondent:

Mr. Orlando Pérez Gárate, Director General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Cindy Rayo Zapata, Directora General de Comercio Internacional de Servicios e Inversión, Secretaría de Economía

Mr. Antonio Nava Gómez, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Mr. Jorge Avilés Cerezo, Subdirector de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Ellionehit Sabrina Alvarado Sánchez, Jefa de Departamento de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía

Ms. Pamela Hernández Mendoza, Secretaría de Economía

Mr. Greg Tereposky, Tereposky & DeRose, LLP

Ms. Graciela Jasa, Tereposky & DeRose, LLP

The Tribunal and the Parties considered the following:

- The Parties’ communications of May 22, 2020, indicating the procedural matters on which they agreed and their respective positions regarding the items on which they did not agree.
- The Draft Agenda circulated by the Secretary of the Tribunal on March 13, 2020.

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

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

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

Order:

1. Constitution of the Tribunal and Tribunal Members’ Declarations

- 1.1. On June 14, 2019, the Claimants appointed Dr. Charles Poncet as the first arbitrator. His contact details are as follows:

Dr. Charles Poncet
Rue Bovy-Lysberg 2
Case postale 5824
1211 Geneva 11
Switzerland
Phone: +41 22 311 00 10
Email: charles@poncet.law

- 1.2. On October 7, 2019, the Respondent appointed Mr. Christer Söderlund as the second arbitrator. His contact details are as follows:

Mr. Christer Söderlund
P.O. Box 3277
SE - 103 65
Stockholm
Sweden
Phone: +46 70 388 41 22
Email: christer.soderlund@mornyc.com

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- 1.3. On February 11, 2020, after consultations with the ICSID Secretariat and the consideration of candidates proposed by the latter, the Parties agreed to appoint Prof. Eduardo Zuleta as presiding arbitrator. His contact details are as follows:

Prof. Eduardo Zuleta

ZULETA Abogados Asociados S.A.S

Calle 87 No. 10 – 93 Oficina 302

Bogotá D.C. 110221

Colombia

Phone: +571 743 1005

Email: ezuleta@zulegal.com; arb@zulegal.com

- 1.4. The Parties confirm that the Members of the Tribunal have been duly and validly appointed.
- 1.5. The Members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the Members of the Tribunal confirms 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.
- 1.6. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 1.7. The Parties confirm that they have no objection to the appointment of any Member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them.

2. Administering Authority, Appointing Authority and Secretary of the Tribunal

- 2.1. On March 3, 2020, ICSID relayed its acceptance of the Parties' appointment as the Administering Authority. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID's services shall be included in the costs of the arbitration.
- 2.2. Work carried out by ICSID as Administering Authority shall be billed annually in accordance with the ICSID Schedule of Fees in force at the time the fees are incurred. Currently, the annual fee for ICSID services is US\$42,000.00 (forty-two thousand United States dollars).
- 2.3. The Secretary-General of ICSID shall act as the Appointing Authority in this arbitration proceeding.

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- 2.4. The Tribunal Secretary is Ms. Geraldine R. Fischer, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties.
- 2.5. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Geraldine Fischer
ICSID – The World Bank
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 473-2950
Email: gfisher1@worldbank.org
Paralegal Email: jargueta@worldbank.org

- 2.6. For local messenger deliveries, the contact details are:

Ms. Geraldine Fischer
1225 Connecticut Avenue, N.W. (“C Building”)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: + 1 (202) 473-2950

3. Fees and Expenses of Tribunal Members

- 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:
- 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. Apportionment of Costs and Advance Payments

- 4.1. The Parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs, pursuant to the UNCITRAL Arbitration Rules.
- 4.2. By letter of March 11, 2020, ICSID requested that each Party pay US\$200,000.00 (two hundred thousand United States dollars) to defray the initial costs of the proceeding. Pursuant to the UNCITRAL Arbitration Rules, payment shall be made within 30 days after the receipt of the request. Claimants made the requested payment on April 30, 2020, and Respondent made the requested payment on April 30, 2020.
- 4.3. The Tribunal may request supplementary deposits from the Parties as needed. Such requests will be accompanied by an interim statement of account.
- 4.4. After the final award has been made, ICSID shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

5. Presence and Quorum

- 5.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

6. Decisions and Procedural Rulings of the Tribunal

- 6.1. All awards and decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 6.2. The Tribunal may take decisions by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal. If the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 6.4. 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. The Tribunal, before

issuing a decision on procedural matters, shall consult the disputing parties, save for circumstances when the Tribunal deems it necessary to issue a ruling without consulting both Parties.

7. Power to Fix Time Limits

- 7.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 7.2. 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.

8. Representation of the Parties

- 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.

<u>For Claimants</u>	<u>For Respondent</u>
Mr. Carlos F. Concepcion Mr. Ricardo A. Ampudia Mr. Giovanni Angles Ms. Alicia M. Menendez Shook, Hardy & Bacon LLP 201 South Biscayne Boulevard Suite 3200 Miami, FL 33131 U.S.A. cconcepcion@shb.com rampudia@shb.com gangles@shb.com amenendez@shb.com	Mr. Orlando Pérez Gárate Director General de Consultoría Jurídica de Comercio Internacional Pachuca 189, Col. Condesa, Demarcación Territorial Cuauhtémoc, Ciudad de México, C.P. 06140. Tel. 5557299100 Ext. 15200 orlando.perez@economia.gob.mx Ms. Cindy Rayo Zapata Directora General de Comercio Internacional de Servicios e Inversión cindy.rayo@economia.gob.mx Mr. Antonio Nava Gómez Director de Consultoría Jurídica de Comercio Internacional antonio.nava@economia.gob.mx Mr. Jorge Avilés Cerezo Subdirector de Consultoría Jurídica de

	<p>Comercio Internacional jorge.aviles@economia.gob.mx</p> <p>Ms. Ellionehit Sabrina Alvarado Sánchez Jefa de Departamento de Consultoría Jurídica de Comercio Internacional sabrina.alvarado@economia.gob.mx</p> <p>Mr. Greg Tereposky Tereposky & DeRose, LLP gtereposky@tradeisds.com arbitration@se-isds.com</p> <p>Ms. Graciela Jasa Tereposky & DeRose, LLP gjasa@tradeisds.com</p>
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- 8.2. Following the date of signature of this Procedural Order, any intended change or addition by a Party to its said legal representatives shall be notified promptly in writing to the other party, the Tribunal and the Tribunal Secretary. Any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal. The Tribunal may withhold approval of any intended change or addition to a Party's legal representatives where such change or addition could compromise the composition of the Tribunal or the finality of any decision, order or award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

9. Place of Arbitration

- 9.1. Washington, D.C. shall be the place of arbitration.
- 9.2. The hearings shall be held at ICSID's headquarters in Washington, D.C. The Tribunal may hold hearings at any other place that it considers appropriate, having regard to the circumstance of the arbitration.
- 9.3. The Tribunal may deliberate at any place it considers convenient.

- 9.4. All awards shall be deemed to have been made at the place of the arbitration, regardless of where the award is signed.

10. Procedural Languages, Translation and Interpretation

- 10.1. English and Spanish are the procedural languages of the arbitration, subject to the following provisions.
- 10.2. Routine, administrative, or procedural correspondence addressed to or sent by the Tribunal or ICSID Secretariat shall be in either procedural language.

For the Parties' submissions

- 10.3. Written requests, applications, pleadings, expert reports and witness statements or accompanying documentation may be submitted in either procedural language.
- 10.4. The Tribunal may require that a party translate any document in whole or in part. Any such translations shall be submitted within a reasonable time period to be established by the Tribunal
- 10.5. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal decides to request a certified translation.
- 10.6. Documents exchanged between the Parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.

For the hearing

- 10.7. The hearing, meetings or conference calls with the Tribunal shall be conducted in English or Spanish. Simultaneous interpretation from one language into the other language shall be available at all times during hearings, meetings or conference calls with the Tribunal. Transcripts shall be taken in both languages during hearings. Conference calls with the Tribunal shall be recorded. They shall be transcribed only at the request of a Party.
- 10.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in a procedural language shall be interpreted simultaneously into both procedural languages.
- 10.9. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation services.

10.10. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

For Tribunal's Documents Except the Award

10.11. The Tribunal shall make any order or decision in both procedural languages. The Tribunal may issue a decision in one of the procedural languages with an equally authentic version in the other procedural language following as soon as possible thereafter. The Tribunal's decisions or orders related to §15 below (Production of Documents) may be made in either procedural language.

For Tribunal's Award

10.12. The Tribunal shall render any award in English and Spanish simultaneously. Both language versions shall be equally authentic.

11. IBA Rules as Guidelines for Rulings on Evidence

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

12. Routing of Communications

12.1. The Parties and their representatives shall not engage in any oral or written communications with any Member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

12.2. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal. If communications contain attachments, they shall be text searchable to the extent possible (i.e., OCR PDF or Word document).

12.3. Written communications ordered by the Tribunal to be filed simultaneously shall be transmitted by email to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal after both Parties' submissions have been received.

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 and Sequence of Pleadings

- 13.1. The arbitration shall proceed in accordance with the Procedural Timetable that will be established by the Tribunal following the submissions of the Parties on the Respondent's bifurcation request.

14. Number of Copies and Method of Filing of Parties' Pleadings

- 14.1. By the relevant filing date, the Parties shall:
- 14.1.1. 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 supporting documentation;¹ and
 - 14.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.
- 14.2. Within five business days following the electronic filing, the Parties shall courier to the opposing Party at the address(es) indicated at §8.1, one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, together with any other supporting documentation, and legal authorities.
- 14.3. Also, within three business days following the electronic filing, the Parties shall courier to the Members of the Tribunal at the addresses indicated at §1 the following:
- 14.3.1. For **Prof. Zuleta**, one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, together with any other supporting documentation, and legal authorities. No hard copies.
 - 14.3.2. For **Dr. Poncet**, one hard copy in A5 format of the entire submission, including the pleading, witness statements, expert reports, and any other supporting documentation (but not including legal authorities); and one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, together with any other supporting documentation, and legal authorities.
 - 14.3.3. For **Mr. Söderlund**, one USB drive with a full copy of the entire submission, including the pleading, witness statements, expert reports, together with any other supporting documentation, and legal authorities. No hard copies.

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

- 14.4. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 14.5. Electronic versions of a pleading, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word) to the extent possible.
- 14.6. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation. The index shall indicate the document number, the pleading with which it was submitted, and shall be filed following the naming conventions contained in **Annex A**.
- 14.7. 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.
- 14.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is uploaded to the file sharing platform and a confirmation email is sent to the Tribunal Secretary.
- 14.9. A filing shall be deemed timely if sent by a Party by midnight, Washington D.C. time (EST), on the relevant date.

15. Production of Documents

- 15.1. The Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) ("**IBA Rules**") in relation to document production in this case.
- 15.2. Each Party may serve a request for production of documents on the other party. Such a request for production shall comply with regulations set forth in Article 3(3) of the IBA Rules. The request shall be made in the form of a Redfern Schedule as attached in Annex B hereto, in both Word and PDF format, and shall not be copied to the Tribunal or the Tribunal Secretary. The description of a category of documents shall include a date or range of dates and the subject matter, the identity of the recipients and senders, and a description of the type of document requested, insofar as possible.
- 15.3. The other Party shall, using the Redfern Schedule provided by the first Party, provide by email to the requesting Party with its reasons and/or objections for its

failure or refusal to produce responsive documents.

- 15.4. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.
- 15.5. The other Party shall produce the requested documents to which it has not filed any objection and, if a party objects to only a certain aspect of a request, the documents that are responsive to the non-objected portion of the request. Documents shall be produced in electronic file format and in searchable form whenever possible. Each Party shall number every page of each document it produces.
- 15.6. The requesting Party shall reply to the other Party's objections indicating, with reasons, whether it disputes the objection, in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal, with a copy to the other Party (in both Word and PDF formats).
- 15.7. The Tribunal will make its best efforts to rule on the objections on the date provided in forthcoming Procedural Timetable and a Party shall produce all documents ordered by the Tribunal by the date provided in the same. The Tribunal may impose costs in its ruling on the objections considering, inter alia, the number of documents requested, the number of requests rejected and the reasons for the rejection.
- 15.8. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible and communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §16 below.
- 15.9. Amendments to the Document Production Schedule, as well as additional request for documents and their corresponding schedule, may be agreed upon by the disputing parties or determined by the Tribunal upon receipt of a reasoned written request from a disputing party, followed by observations from the other party. Amendments to the Document Production Schedule will be made by reissuing the Procedural Timetable.
- 15.10. The Parties shall seek agreement on production requests to the greatest extent possible. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.
- 15.11. 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. Documentary Evidence

- 16.1. Written pleadings shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities.
- 16.2. The documents shall be submitted in the manner and form set forth in §14 above.
- 16.3. Neither Party shall be permitted to submit additional or responsive documents or testimony or expert reports after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon 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, testimony or expert reports that Party shall not annex to its request the documents that it requests to file.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, testimony or expert reports, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such new document, testimony or expert report.
- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence if it deems it necessary.
- 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 Claimants 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. 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.

16.5.7. Voluminous or technical documentary evidence may be submitted in electronic form only.

16.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.

16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at the 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 hard and electronic copies to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.

17. Witness Statements and Expert Reports

17.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.

17.2. Witness Statement and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.

17.3. Each witness statement and expert report 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 on the Taking of Evidence in International Arbitration (2010).

18. Examination of Witnesses and Experts

18.1. The rules below apply to the examination of fact and expert witnesses.

18.2. A Party may be called upon by the opposing Party or the Tribunal to produce at the hearing for cross-examination any witness or expert whose written testimony has been submitted with the Pleadings.

18.3. On the date provided in the forthcoming Procedural Timetable, each Party shall notify to the other Party, with a copy to the Tribunal, which witnesses or experts it wishes to cross-examine at the hearing.

- 18.4. Shortly after the Parties' notification, the Tribunal will indicate to the Parties whether it wishes any witnesses or experts who have not been designated to testify to appear at the hearing.
- 18.5. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. Each Party remains free to challenge the content of the witness statement or expert report. The Tribunal will assess the weight of the written statement taking into account the entire record, all the relevant circumstances and the submissions of the Parties.
- 18.6. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will ultimately decide upon the appropriate allocation of such costs.
- 18.7. Examination by videoconference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.8. At the hearing, witnesses and experts shall be examined by each Party under the control of the Tribunal. The examination of each witness shall be limited to the content of the witness statement or expert report and proceed as follows:
 - 18.8.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration contained in ICSID Arbitration Rule 35(3).
 - 18.8.2. Direct examination is given in the form of witness statements and expert reports. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the witness statement. After consultation with the Parties, the Tribunal may also request experts to give a presentation lasting no longer than thirty minutes before the start of their cross-examination summarizing their methodology and conclusions.
 - 18.8.3. Subject to the discretion of and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion.
 - 18.8.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination.

18.8.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties; and

18.8.6. The Tribunal may direct two or more experts to be examined concurrently (expert conferencing). This and other matters relating to the examination of experts will be addressed at an appropriate time in advance of a hearing.

18.9. Subject to a different agreement by the Parties, a fact witness who is not a named Party in this arbitration shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, prior to his or her examination. Fact witnesses may be in the hearing room after completion of their testimony. This limitation does not apply to expert witnesses.

18.10. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness.

19. Pre-Hearing Organizational Meeting

19.1. Six weeks before a hearing, a pre-hearing organizational meeting shall be held (by telephone or videoconference, pursuant to the Tribunal's discretion after conferring with the Parties) between the Tribunal and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearing

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. Subject to §20.5, the hearing shall be held at ICSID's hearing facilities in Washington, D.C.

20.3. The hearing shall take place on the dates specified in the forthcoming Procedural Timetable.

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. If the Tribunal deems appropriate due to health and safety circumstances, upon consultation with the Parties the Tribunal shall have the authority to hold a remote hearing. In any event, whether hearings are in-person or remote, a procedural order contain a hearing protocol shall be agreed upon by the disputing parties or decided

by the Tribunal. All other matters regarding hearings shall be agreed upon by the disputing parties or decided by the Tribunal at a later stage.

21. Records of Hearing and Sessions

21.1. Sound recordings shall be made of the hearing 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 the hearing and sessions 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. The Secretariat will arrange for court reporting services.

21.3. The Parties shall agree on any corrections to the transcripts 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Confidentiality and Publication

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

22.2. Subject to the procedures for the protection of confidential information below, 30 days from the decision on redactions under §22.3, ICSID shall publish:

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

22.2.2. The following submissions, including supporting witness statements, expert reports, and exhibits: (i) Claimant’s notice of arbitration; (ii) Claimant’s Memorial; (iii) Respondent’s Counter-Memorial; (iv) Claimant’s Reply; (v) Respondent’s Rejoinder.

22.2.3. Any written submission by other treaty Parties.

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

22.3. The Parties shall seek agreement on the documents or parts of documents that are to be redacted prior publication (i.e. confidential business information, information which is privileged or otherwise protected from disclosure under domestic law, or information which must be withheld pursuant to the applicable arbitral rules). If after 30 days from submission the Parties are unable to reach agreement, redactions shall be decided by the Tribunal.

23. Non-Disputing Party Participation

23.1. The Tribunal will decide on Non-Disputing party Participation following the submissions of the Parties on the Respondent's bifurcation request.

24. Immunity of the Tribunal

24.1. The Parties agreed that no Member of the Tribunal shall be liable to any Party howsoever for any act or omission in connection with this arbitration, save: (i) where the act or omission is shown by that Party to constitute conscious and deliberate wrongdoing committed by the member of the Tribunal alleged to be liable to that party; or (ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

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

[Signed]

Eduardo Zuleta
Presiding Arbitrator
Date: May 28, 2020

ANNEX A – 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.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading

SUPPORTING DOCUMENTATION Exhibits	C-#### R-#### To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001</i>
	<i>C-0002</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001</i>
	<i>R-0002</i>
Legal Authorities	CLA-#### RLA-#### To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CLA-0001</i>
	<i>CLA-0002</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RLA-0001</i>
	<i>RLA-0002</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission
Expert Reports	<i>Expert Report-Name of Expert-Type-Name of Submission</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission
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>	

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	<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]
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ANNEX B – REDFERN SCHEDULE

No.	Document or Category of Documents Requested (Requesting Party)	Relevance According to Requesting Party		Reasoned objections to Document Production Request (objecting Party)	Reply to Objections to Document Production Request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
1.						
2.						