

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Almaden Minerals Ltd. and Almadex Minerals Ltd.

v.

United Mexican States

(ICSID Case No. ARB/24/23)

**PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality**

Members of the Tribunal

Prof. Luca G. Radicati di Brozolo, President of the Tribunal
Mr. Oscar M. Garibaldi, Arbitrator
Prof. Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

Assistant to the Tribunal

Ms. Valeria Fasciani

19 December 2024

I. PROCEDURAL BACKGROUND

1. On 27 November 2024, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On 13 December 2024, the Parties commented on Draft PO2.
3. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

4. The legal framework applicable to these proceedings is determined by Chapter 9, Section B of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”), which entered into force for Canada and Mexico on December 30, 2018.
5. CPTPP Article 9.24 establishes the transparency regime applicable to arbitral proceedings instituted under the CPTPP.
6. Pursuant to CPTPP Article 9.1 (Definitions), the term “*protected information*” means “*confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law, including classified government information.*” In addition, “*protected information*” shall include information which the Tribunal considers:
 - (a) must be withheld pursuant to the relevant arbitral rules, as applied;
 - (b) is protected in accordance with the orders and decisions of the Tribunal;
 - (c) is protected by agreement of the Parties;
 - (d) constitutes protected personal information;
 - (e) public disclosure of which would impede law enforcement;
 - (f) public disclosure of which would aggravate the dispute between the Parties;
 - (g) public disclosure of which would undermine the integrity of the arbitral process; or
 - (h) a State party to the dispute considers that public disclosure of which would be contrary to its essential security interests.
7. In accordance with CPTPP Article 9.24.1, and subject to the redaction of information designated as “*protected information*”, the following documents shall be publicly available:
 - (a) the notice of intent;
 - (b) the Request for Arbitration;
 - (c) pleadings, memorials and briefs submitted to the Tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation);
 - (d) minutes or transcripts of hearings of the tribunal, if available; and
 - (e) orders, awards and decisions of the Tribunal.

8. Any “*protected information*” that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedures set out in CPTPP Articles 9.24.3 and 9.24.4, Article 48(5) of the ICSID Convention and as supplemented by Section III of this Order.

9. The “*protected information*” of this arbitral proceeding shall be governed by CPTPP Articles 9.24.3 and 9.24.4, which read as follows:

“3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal’s determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.”

III. TRANSPARENCY RULES

10. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. ORDERS, DECISIONS, AWARD (CPTPP ARTICLE 9.24.1)¹

11. The Parties consent to publication of orders, decision and the Award by ICSID on its website as provided in section 26.2 of Procedural Order No. 1.

B. WRITTEN SUBMISSIONS (CPTPP ARTICLE 9.24.1)

12. ICSID shall publish the Parties' main written submissions (memorial, counter-memorial, reply, rejoinder, request for bifurcation, response to the request for bifurcation, etc), with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section E below.
13. Supporting documents, including indexes, exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.
14. The parties agree that ICSID will publish written submissions submitted pursuant to CPTPP Articles 9.23.2 and 9.23.3 within 30 days from the filing of the relevant submission. These submissions will be published with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section E below.

C. OPEN HEARINGS (CPTPP ARTICLE 9.24.2)

15. Pursuant to CPTPP Article 9.24.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements in a forthcoming separate procedural order. If a Party intends to use information in a hearing that is designated as protected information or otherwise subject to CPTPP Article 9.24.3, it shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

D. TRANSCRIPTS AND RECORDINGS OF HEARINGS (CPTPP ARTICLE 9.24.1(D))

16. ICSID shall publish transcripts of hearings, with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section E below.
17. ICSID shall not publish any recordings of hearings.

E. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (CPTPP ARTICLE 9.24.4)

18. With respect to publication pursuant to Sections A, B, C and D above, any confidential or protected information as defined in CPTPP Article 9.1 (as supplemented by paragraph 6 above) that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:

¹ Pursuant to ICSID Arbitration Rule 72(2), this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.

19. Within fifteen (15) days from the date of a decision, order or Award, filing of a written submission (as defined in paragraphs 12 and 14), or the date of transmittal of a final transcript, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. A Party seeking to prevent disclosure of protected information under Articles 9.24.3 and 9.24.4, shall, within the same fifteen (15) day period, designate the information according to the schedule appended as Annex A to this Procedural Order No. 2. Absent such a notice within the 15-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with the CPTPP, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.
20. Within 14 days of receipt of the notice referred to in paragraph 19, the other Party may raise objections to the proposed redactions.
21. If no objections are raised within the deadline established in paragraph 19, the Tribunal will authorize ICSID to publish the document at issue with the requested redactions.
22. If objections are raised within the deadline established in paragraph 19, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
23. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order.
24. If information is to be redacted from a document, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
25. If the Tribunal decides that information filed by a Party for which protection is sought is not protected or confidential information and should be published, the Party that filed the document or submission shall be permitted to withdraw all or part of the document from the record within 14 days of the Tribunal's decision as provided for in CPTPP Article 9.24.4(d).
26. With respect to the Award, the Parties agree that the Tribunal shall only become *functus officio* after the confidentiality objections, if any, have been resolved.

On behalf of the Tribunal,



Prof. Luca G. Radicati di Brozolo
President of the Tribunal
Date: 19 December 2024

ANNEX A TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	