

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

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

**JOSHUA DEAN NELSON, IN HIS OWN RIGHT AND ON BEHALF OF TELE FÁCIL
MÉXICO S.A. DE C.V., AND JORGE LUIS BLANCO**

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/17/1

PROCEDURAL ORDER NO. 1

Tribunal

Dr. Eduardo Zuleta (Presiding Arbitrator)
Mr. V.V. Veeder, QC
Mr. Mariano Gomezperalta

Secretary of the Tribunal

Ms. Sara Marzal Yetano

18 July 2017

Table of Contents

1.	Commencement of Arbitration	3
2.	Applicable Arbitration Rules	4
3.	Constitution of the Tribunal and Tribunal Members' Declarations.....	4
4.	Administrative Authority and Secretary of the Tribunal	5
5.	Fees and Expenses of Tribunal Members	6
6.	Apportionment of costs and advance payments.....	7
7.	Presence and Quorum	7
8.	Decisions and Procedural Rulings of the Tribunal	7
9.	Power to Fix Time Limits	8
10.	Representation of the Parties	8
11.	Place of Arbitration.....	10
12.	Procedural Language(s), Translation and Interpretation	10
13.	IBA Rules as Guidelines for Rulings on Evidence.....	11
14.	Routing of Communications	11
15.	Written and Oral Procedures.....	12
16.	Number of Copies and Method of Filing of Main Pleadings.....	12
17.	Number and Sequence of Pleadings	13
18.	Production of Documents	13
19.	Documentary Evidence	16
20.	Witness Statements and Expert Reports	18
21.	Examination of Witnesses and Experts.....	18
22.	Pre-Hearing Organizational Meetings	19
23.	Hearings	19
24.	Records of Hearings and Sessions	19
25.	Post-Hearing Submissions and Statements of Costs.....	20
26.	Confidentiality and Publication	20
27.	Amicus Curiae and Non-Disputing Party Participation.....	21

Introduction

The first session of the Tribunal was held on 7 July 2017 by telephone conference.

Participating in the conference call were:

Members of the Tribunal:

Eduardo Zuleta, Presiding Arbitrator

V.V. Veeder QC, Arbitrator

Mariano Gomezperalta Casali, Arbitrator

ICSID Secretariat:

Sara Marzal

Participating on behalf of the Claimants:

Mr. Timothy J. Feighery, Arent Fox LLP

Mr. Lee M. Caplan, Arent Fox LLP

Participating on behalf of the Respondent:

Ms. Samantha Atayde Arellano, Secretaría de Economía

Ms. Cindy Rayo Zapata, Secretaría de Economía

Mr. Cameron Mowatt, Cameron Mowatt Law Corporation

Ms. Ximena Iturriaga, Cameron Mowatt Law Corporation

The Tribunal and the parties considered the following:

- The draft Terms of Appointment and draft Procedural Order No. 1 circulated by the President of the Tribunal to the parties on 24 May 2017.
- The parties' communications of 6 June 2017, 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 3 July 2017.

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. Commencement of Arbitration

- 1.1. By Notice of Arbitration dated 26 September 2016, the Claimants commenced arbitration proceedings against the Respondent pursuant to Articles 1116(1),

1117(1) and 1120(1)(c) of the North American Free Trade Agreement (“NAFTA”) and the Arbitration Rules of the United Nations Commission on International Trade Law adopted by the UN General Assembly on 15 December 1976 (the “UNCITRAL Rules”).

- 1.2. In accordance with the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on 26 September 2016, the date on which the Respondent received the Notice of Arbitration.

2. Applicable Arbitration Rules

Article 1120 and 1139 of the NAFTA

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

3. Constitution of the Tribunal and Tribunal Members’ Declarations

Articles 7 and 9 of the UNCITRAL Arbitration Rules (1976)

- 3.1. On 31 October, 2016, the Claimants appointed Mr. V.V. Veeder, QC as the first arbitrator. His contact details are as follows:

Mr. V.V. Veeder, QC

Essex Court Chambers

24 Lincoln’s Inn Fields

London WC2A 3EG

United Kingdom

Tel: Int + 44 207 813 8000

Email: vvveeder@londonarbitrators.net

- 3.2. On 23 December 2016, the Respondent appointed Mr. Mariano Gomezperalta Casali as the second arbitrator. His contact details are as follows:

Mr. Mariano Gomezperalta Casali

Avenida Vialidad de la Barranca No. 6 Piso 4

Col. Ex-Hacienda de Jesús del Monte

Huixquilucan, Estado de México CP 52772

Fax. + 52 55 4739 8001

Tel. + 52 55 3601 3636

Email: mgomezp@robertwraypllc.com

- 3.3. On 1 May 2017, the Secretary-General of ICSID appointed Dr. Eduardo Zuleta as presiding arbitrator. His contact details are as follows:

Dr. Eduardo Zuleta

Calle 87 No. 10-93 Of. 302

Bogotá, D.C.

Colombia

Tel. + 57 1 7431008

Email: ezuleta@zulegal.com

- 3.4. The parties confirmed that the members of the Tribunal have been duly and validly appointed in accordance with NAFTA and the UNCITRAL Rules. The parties further confirm that the Tribunal has been duly and validly constituted in accordance with NAFTA and the UNCITRAL Rules.
 - 3.5. The members of the Tribunal confirmed that they are and shall remain impartial and independent of the parties. Each of the members of the Tribunal confirmed that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
 - 3.6. The members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
 - 3.7. The parties confirmed 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.
4. Administrative Authority and Secretary of the Tribunal
ICSID Administrative and Financial Regulation 25
- 4.1. On 26 June 2017, the parties confirmed their agreement to the designation of the International Centre for Settlement of Investment Disputes (ICSID) 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.
 - 4.2. The Tribunal Secretary is Ms. Sara Marzal Yetano, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
 - 4.3. Copies of communications by email, mail, and courier/parcel shall be sent to:

Ms. Sara Marzal Yetano
ICSID
MSN J2-200
1818 H Street, N.W.

Washington, D.C. 20433

USA

Tel.: + 1 (202) 473-6434

Fax: + 1 (202) 522-2615

Email: smarzal@worldbank.org

Paralegal email: akocchiu@worldbank.org

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

Ms. Sara Marzal Yetano

701 18th Street, N.W. (“J Building”)

2nd Floor

Washington, D.C. 20006

Tel.: + 1 (202) 458-1534

5. Fees and Expenses of Tribunal Members

Article 39 UNCITRAL Arbitration Rules (1976); ICSID Schedule of Fees; Regulation 14 of the ICSID Administrative and Financial Regulations

- 5.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 5.2. Under the current Schedule of Fees, each Tribunal Member receives:
- 5.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and
- 5.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 5.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 5.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

6. Apportionment of costs and advance payments

Article 41 UNCITRAL Arbitration Rules (1976); ICSID Administrative and Financial Regulation 14

- 6.1. The parties shall defray the costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs, pursuant to Article 40 of the UNCITRAL Rules.
- 6.2. By letter of 28 June 28 2017 ICSID requested that Claimants pay US\$ 200,000 and Respondent US\$ 200,000 to defray the initial costs of the proceeding.
- 6.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account.
- 6.4. After the award has been made, the Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

7. Presence and Quorum

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

8. Decisions and Procedural Rulings of the Tribunal

Article 31 of the UNCITRAL Rules (1976)

- 8.1. All awards and decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 8.2. The Tribunal may take decisions by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal. If the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 8.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 8.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

9. Power to Fix Time Limits

Article 23 of the UNCITRAL Rules (1976)

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

10. Representation of the Parties

- 10.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

<u>For Claimant[s]</u>	<u>For Respondent[s]</u>
<u>Arent Fox LLP</u> Timothy J. Feighery, Partner timothy.feighery@arentfox.com Tel: (202) 857-6085 Fax: (202) 857-6395 1717 K Street NW Washington, DC 20006 Lee M. Caplan, Partner lee.caplan@arentfox.com Tel: (202) 857-6337 Fax: (202) 857-6395 1717 K Street NW Washington, DC 20006 Claudia D. Hartleben, Associate claudia.hartleben@arentfox.com Tel: (202) 857-8936 Fax: (202) 857-6395 1717 K Street NW Washington, DC 20006 <u>Innovista Law</u>	Samantha Atayde Arellano Directora General de Consultoría Jurídica de Comercio Internacional Paseo de la Reforma 296, Piso 25. Col. Juárez. Del. Cuauhtémoc. C.P. 06600. Ciudad de México samantha.atayde@economia.gob.mx Tel: +52 (55) 5729 9134, 3135 o 9136 Tel: +52 (55) 5729 9100 Ext. 15200 o 15237 Leticia M. Ramírez Aguilar Directora General Adjunta de Consultoría Jurídica de Comercio Internacional leticia.ramirez@economia.gob.mx Tel: +52 (55) 5729 9100 Ext. 15210 Cindy Rayo Zapata Directora de Consultoría Jurídica de Comercio Internacional cindy.rayo@economia.gob.mx Tel: +52 (55) 5729 9100 Ext. 15501 Rafael Rodríguez Maldonado

<p>G. David Carter, Member david.carter@innovistalaw.com Tel: (202) 869-1502 Fax: (202) 869-1503 1825 K Street NW Suite 508 Washington, DC 20006</p> <p>Martin F. Cunniff, Member martin.cunniff@innovistalaw.com Tel: (202) 869-1505 Fax: (202) 869-1503 1825 K Street NW Suite 508 Washington, DC 20006</p> <p>Ernesto Mendieta, Foreign Legal Consultant ernesto.mendieta@innovistalaw.com Tel: (804) 729-0055 Fax: (202) 869-1503 115 E. Broad Street Richmond, VA 23219</p>	<p>Director de Consultoría Jurídica de Comercio Internacional rafael.rodriguez@economia.gob.mx Tel: +52 (55) 5729 9100 Ext. 15211</p> <p>J. Cameron Mowatt J. Cameron Mowatt, Law Corporation cmowatt@isds-law.com</p> <p>Alejandro Barragán J. Cameron Mowatt, Law Corporation abarragan@isds-law.com</p> <p>Ximena Iturriaga J. Cameron Mowatt, Law Corporation xiturriaga@isds-law.com</p>
---	--

- 10.2. The Respondent indicated that Ms. Samantha Atayde Arellano, “Directora General de Consultoria Juridica de Comercio Internacional”, is the legal representative of the United Mexican States by virtue of Article 34, subparagraph VII of the “Reglamento Interior de la Secretaria de Economia” published in the Official Gazet on September 9, 2016 and therefore does not require further accreditation to represent the United Mexican States in this arbitration. Ms. Atayde will be assisted in this case by the officials and outside counsel listed above.
- 10.3. The Respondent acknowledged that the Claimants have confirmed their designations by providing copies of the powers of attorney or letters of representation granted to its representatives.
- 10.4. 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.

11. Place of Arbitration

Article 16 of the UNCITRAL Rules (1976); Article 1130 of the NAFTA

- 11.1. Toronto, Canada shall be the place of arbitration.
- 11.2. Hearings shall be held at ICSID's headquarters in Washington, DC.
- 11.3. The Tribunal may deliberate at any place it considers convenient.
- 11.4. All awards shall be deemed to be made at the place of the arbitration, regardless of where the award is signed.

12. Procedural Language(s), Translation and Interpretation

Article 17 of the UNCITRAL Rules (1976)

- 12.1. English and Spanish are the procedural languages of the arbitration, subject to the following provisions.
- 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the Tribunal, as well as any written requests and applications from the parties, shall be in either procedural language. A party shall provide a courtesy translation into the other language of any communication exceeding 2 pages in length within 3 days thereafter.

For the parties' main submissions

- 12.3. The main pleadings, expert reports, witness statements and any other accompanying documentation may be submitted in either procedural language, provided that a translation to the other procedural language is filed within 15 business days thereafter.
- 12.4. Exhibits and legal authorities in Spanish must be translated into English and vice-versa. If such document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation.
- 12.5. Any document written in a language other than the procedural languages must be translated to English.

- 12.6. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal decides to request a certified translation.
- 12.7. Documents exchanged between the parties under §18 below (Production of Documents) may be produced in the original language and need not be translated.

For the hearing

- 12.8. The hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 12.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §22 below), which witnesses or experts require interpretation services.
- 12.10. 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 the Tribunal's Awards and Decisions

- 12.11. Orders and decisions shall be issued in both procedural languages. For urgent matters, the Tribunal may issue an order or decision in one of the procedural languages with an equally authentic version in the other procedural language following shortly thereafter.
- 12.12. The Tribunal shall render the Award in English and Spanish concurrently.

13. IBA Rules as Guidelines for Rulings on Evidence

- 13.1. For matters concerning the gathering or taking of evidence that are not otherwise covered by a procedural order issued by the Tribunal, the UNCITRAL Arbitration Rules (1976) or NAFTA Chapter 11, 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.

14. Routing of Communications

- 14.1. 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.

- 14.2. Written communications in the case shall be transmitted by email to the parties, the Tribunal Secretary, and the Tribunal. If such communications contain attachments, they shall be text searchable (i.e., OCR PDF or Word document).
 - 14.3. 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.
 - 14.4. 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.
15. Written and Oral Procedures
- 15.1. The proceeding shall consist of a written phase followed by an oral phase.
 - 15.2. The written procedure will comprise two rounds of pleadings to be filed on the dates established in Annex I.
16. Number of Copies and Method of Filing of Main Pleadings
- 16.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary, the opposing party and the Members of the Tribunal an electronic version of the pleading with witness statements, expert reports and a consolidated list of exhibits.
 - 16.2. Within 3 business days of the email filing, the parties shall upload the materials filed by email as well as the supporting exhibits and legal authorities, including a consolidated list of legal authorities, to the file sharing platform created by ICSID for purposes of this case.
 - 16.3. The electronic filing process indicated under §16.1 and §16.2 shall apply to both the original language submission and to any subsequent translations submitted pursuant to §12.3.
 - 16.4. Within 3 business days following the electronic filing of the translations submitted pursuant to §12.3, the parties shall courier to the Tribunal Secretary:
 - 16.4.1. one unbound hard copy in A4 or Letter format of the entire submission (both in the original language and the subsequent translations), including signed originals of the pleading, witness statements, and expert reports, together

with exhibits (but not including legal authorities) and the consolidated indices.

16.4.2. one USB drive, or CD-ROM, with full copies of the entire submission (both in the original language and the subsequent translations), including the pleading, the witness statements, expert reports, exhibits, legal authorities and consolidated indices.

16.5. Within 3 business days following the electronic filing of the translations submitted pursuant to §12.3, the parties shall courier to the opposing party and each Member of the Tribunal:

16.5.1. one USB drive, or CD-ROM, with full copies of the entire submission (both in the original language and the subsequent translations), including the pleading, the witness statements, expert reports, exhibits, legal authorities and consolidated indices.

16.6. The Tribunal may request the parties to produce a hard copy of any document filed electronically.

16.7. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word). The electronic versions of the pleadings, the witness statements and expert reports shall allow electronic copy and paste of the text.

16.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

16.9. A filing shall be deemed timely if sent by a party by midnight, Toronto time, on the relevant date.

17. Number and Sequence of Pleadings

Articles 22 and 23 of the UNCITRAL Arbitration Rules (1976)

17.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex 1, except if the Tribunal, at the reasonable request of any Party or on its own initiative, decides that, for good cause, this Procedural Timetable has to be amended.

17.2. Amendments to the Procedural Timetable will be made by reissuing Annex I.

18. Production of Documents

18.1. The disputing parties shall have an opportunity to request a reasonable number of

documents (Request for Documents) from the other disputing party before the filing of the Statement of Claim, Statement of Defense, Reply and Rejoinder.

- 18.2. Additional Requests 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.
- 18.3. Requests for Documents shall be submitted in Word format using the Redfern Schedule provided in Annex 3, by the date specified in the Document Production Schedule in Annex 2.
- 18.4. The Document Production Schedule may be amended by agreement of the parties or by order of the Tribunal. Amendments to the Document Production Schedule will be made by reissuing Annex 2.
- 18.5. Each document request shall comply with the requisites established in Article 3(3) of the IBA Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (IBA Rules). The description of a category of documents shall include a date or range of dates and the subject matter insofar as possible.

Procedure in the Event of Objections

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

Objections

- 18.7. The party that has received a request for documents shall submit by email its objections to the Requesting Party, by the date specified in the Document Production Schedule.
- 18.8. The objections shall be included in the Redfern Schedule containing the document requests and shall be submitted in Word format.
- 18.9. Objections to the production of a document or a category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.

Reply to Objections

- 18.10. The requesting party shall reply to the objections to produce by the date specified in the Document Production Schedule in Annex 2, as amended from time to time by agreement of the Parties or by decision of the Tribunal.

18.11. The reply to the objections shall be included in the Redfern Schedule containing the requests and the objections and shall be submitted in Word format.

Decision by the Tribunal to Disputed Requests

18.12. Disputed Requests will be decided by the Tribunal on a case-by-case basis, as soon as possible, upon receipt of the reply to the objections.

18.13. The Tribunal's decision on Disputed Requests will be included in the same Redfern Schedule containing the request, objections and reply, using the column or row reserved for that purpose.

18.14. The Tribunal shall set a reasonable due date for the production of documents pertaining to any Disputed Requests decided in favour of the requesting party.

Document Production

18.15. Documents or categories of documents pertaining to undisputed requests shall be produced by the due dates indicated in the Document Production Schedule in Annex 2.

18.16. Documents or categories of documents pertaining to Disputed Requests shall be produced by the date determined by the Tribunal.

18.17. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.

18.18. The producing party shall provide the requesting party with a complete and accurate list of the documents that are being produced, at the time of production. Said list shall contain the name of the corresponding electronic file and a brief description of the document. Any errors in the list shall be corrected by the Producing Party as soon as possible.

18.19. The requested documents and the list of documents shall be made available to the requesting party by the due date using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. The producing party shall also deliver a USB drive with a complete set of the documents and the list to the requesting party within 3 business days of the corresponding due date.

18.20. Documents produced in response to a request for documents will not be part of the record, unless they are included as exhibits to a written submission or as an annex to a witness statement or expert report.

18.21. The Tribunal may, where appropriate, make necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection.

Compliance with Document Requests

18.22. Disputes regarding compliance with Document Requests will be decided by the Tribunal after hearing from the disputing parties.

18.23. If a disputing party fails, without satisfactory explanation, to produce any document requested in a Request for Documents to which it has not objected in due time, or fails to produce any document or category of documents ordered by the Tribunal, the Tribunal may infer that such document or category of documents is adverse to the interests of the non-complying Party.

18.24. 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 conducts into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.

19. Documentary Evidence

Article 24 of the UNCITRAL Rules (1976)

19.1. The Statement of Claim and Statement of Defense shall be accompanied by all the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

19.2. The documents shall be submitted in the manner and form set forth in §19.5 below.

19.3. Neither party shall be permitted to submit additional or responsive documents or testimony after the filing of its respective last written submission, except in exceptional circumstances with leave from the Tribunal, to be granted upon a showing of good cause.

19.3.1. Should a party request leave to file additional or responsive documents, testimony or expert reports that party shall not annex the documents that it seeks to file to its request.

19.3.2. If the Tribunal grants such an application and admits the document into evidence, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning the new document,

testimony or expert report.

- 19.4. The Tribunal may call upon the parties to produce documents or other evidence if it deems it necessary.
- 19.5. The documents shall be submitted in the following form:
 - 19.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 19.5.2. The number of each Exhibit containing a document produced by the Claimants shall be preceded by the letter “C-” for factual exhibits and “CL- ” for legal exhibits containing authorities. The number for each Exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.
 - 19.5.3. Each Exhibit shall have a cover page or divider with the exhibit identification number.
 - 19.5.4. A party may produce several documents relating to the same subject matter within one exhibit, numbering each page of such exhibit separately and consecutively.
 - 19.5.5. Exhibits shall be submitted in PDF format and start with the number “C- 001,” “CL-001,” and “R-001,” and “RL-001,” respectively.
 - 19.5.6. 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.
- 19.6. 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.
- 19.7. Demonstrative exhibits (such as PowerPoint 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 exhibit(s) from which it is derived. Each party shall share a copy of demonstrative exhibits pertaining to a specific hearing presentation with the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and the interpreter(s) at a time of its choosing, but no later than immediately before the specific hearing presentation for which the demonstrative exhibits were prepared.

20. Witness Statements and Expert Reports

- 20.1. Witness statements, expert reports and their supporting documentation shall be filed as exhibits to the pleadings.
- 20.2. Witness statements and expert reports shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 20.3. All witness statements and expert reports shall be signed and dated by the witness or expert, and include all the information contemplated in Articles 4(5) and 5(2), respectively, of the IBA Rules on the Taking of Evidence in International Arbitration (2010).
- 20.4. It shall not be improper for a disputing party, its officers, employees, legal advisors or other representatives to interview that party's witnesses or potential witnesses and to discuss their prospective testimony with them

21. Examination of Witnesses and Experts

- 21.1. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 21.2. The Tribunal may disregard the testimony of a witness or expert called to testify at the hearing who fails to appear at the hearing without justified reasons. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 21.3. The parties shall notify the opposing party which witness and experts it intends to call for cross-examination within 4 weeks after completion of the Written Procedure. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.
- 21.4. Witnesses and experts shall be examined by each party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witness and experts shall make a declaration of truthfulness.
- 21.5. Direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness or expert may conduct a brief direct examination at the hearing, limited to the content of their corresponding witness statement or expert report. Any witness called for direct examination may be cross-examined by the other party and questioned by the Tribunal.
- 21.6. Subject to the discretion of and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in

his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion. Re-direct examination shall be limited to the subject of cross-examination.

21.7. Witnesses of fact shall be allowed in the hearing room after having given their oral evidence. Experts shall be allowed in the hearing room at any time.

22. Pre-Hearing Organizational Meetings

22.1. At the discretion of the Tribunal after consultation with the parties, a pre-hearing conference call may be convened in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

23. Hearings

Article 25 of the UNCITRAL Arbitration Rules (1976)

23.1. The hearing shall be held at ICSID's headquarters in Washington, DC.

23.2. The hearing shall take place at a date to be determined by the Tribunal upon consultation with the parties, but not earlier than 10 weeks after the completion of the written procedure.

23.3. 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.

23.4. The principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings. Each party shall be permitted to use the time allocated to it as it sees fit.

23.5. Hearings shall be closed to the public. However, provisions shall be made for representatives of the other NAFTA Parties to attend the hearing upon request.

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

24. Records of Hearings and Sessions

24.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Members of the Tribunal.

24.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing

and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

- 24.3. The parties shall agree on any corrections to the transcripts within 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 court reporter 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.

25. Post-Hearing Submissions and Statements of Costs

- 25.1. The Tribunal shall decide at the hearing, after hearing the parties, whether and by when any post-hearing briefs may be required, and when cost submissions are to be made.

26. Confidentiality and Publication

NAFTA Article 1137(4), and FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents, Article 32.5 of the UNCITRAL Rules (1976)

- 26.1. 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.
- 26.2. Subject to the procedures for the protection of confidential information that shall be established in a subsequent Procedural Order by the Tribunal after consultation with the parties (the “Confidentiality Order”), the ICSID Secretariat will publish on the Centre’s website the following documents:
- 26.2.1. Any orders, decisions, interim or partial awards, as well as the final award, issued by the Tribunal.
- 26.2.2. The following memorials (but not the supporting witness statements, expert reports, exhibits, or legal authorities): (i) Claimants’ notice of arbitration and its amendment; (ii) Claimants’ statement of claim; (iii) Respondent’s statement of defence; (iv) Claimants’ reply; Respondents’ rejoinder.
- 26.2.3. Any written submissions by other NAFTA Parties.
- 26.2.4. Any written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal.

- 26.3. Subject to the terms of the Confidentiality Order, the main memorials identified in §26.2.2 shall only be published by the Centre after the opposing party has submitted before the Tribunal its response to said memorial. Therefore:
- 26.3.1. Claimants' Statement of Claim shall only be published together with Respondent's Statement of Defence;
- 26.3.2. Claimants' Reply shall only be published together with Respondent's Rejoinder.
- 26.4. The written submissions by other NAFTA Parties and the written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal shall be published on the dates determined by the Tribunal.
- 26.5. The Confidentiality Order mentioned in §26.2 will set forth the procedures that shall govern the designation of confidential information and the preparation of redacted copies of documents for publication.
27. *Amicus Curiae and Non-Disputing Party Participation*
Article 1128 of the NAFTA; FTC Statement on Non-Disputing Party Participation dated 7 October 2003
- 27.1. Non-disputing NAFTA Parties may make submissions on questions of NAFTA treaty interpretation pursuant to the procedure and requirements set forth in NAFTA Article 1128 and in accordance with the schedule set out in Annex 1.
- 27.2. The disputing parties shall have an opportunity to comment on any submission made by the NAFTA Parties' under Article 1128.
- 27.3. In accordance with the schedule set out in Annex 1, the Tribunal shall apply the Free Trade Commission's recommendations on non-disputing party participation issued on 7 October 2003 in respect of any application for permission to file a submission in this arbitration by a person or entity that is not a party to the dispute, other than the non-disputing NAFTA Parties.
- 27.4. The disputing parties shall have a reasonable opportunity to make submissions on any application for leave to file a submission in this arbitration by an intending Amicus and to comment on the submission itself should the Tribunal allow it.
- 27.5. The Tribunal shall issue a ruling on any application for leave to file an Amicus submission, considering the recommendations of the Free Trade Commission on non-disputing party participation.

- 27.6. If an application for permission to file a submission is granted, the Parties shall have the opportunity to present their observations on any such submission.

28. Immunity of the Tribunal

- 28.1. 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.
- 28.2. 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 witness or participant in any legal or other proceedings arising out of or in connection with the arbitration

On behalf of the Tribunal

[*Signed*]

Dr. Eduardo Zuleta
Presiding Arbitrator
Date: 18 July 2017

Annex 1

Procedural Time Table

Merits Phase

Submission	Term	Due Date
Statement of Claim	16 weeks from the date of Procedural Order No. 1	7 Nov. 2017
Statement of Defense	16 weeks from the due date of the Statement of Claim	27 Feb. 2018
Reply	12 weeks from the due date of the Statement of Defense	22 May 2018
Rejoinder	12 weeks from the due date of the Reply	14 Aug. 2018
Applications to file Non-Disputing Party Submissions	3 weeks from the publication of the Rejoinder	TBD
Parties' comments on Non-Disputing Party Application	2 weeks from the date of the Non-Disputing Party application	TBD
Tribunal's decision on Non-Disputing Party Applications	Within a reasonable time period from the date of the Parties' comments on the Non-Disputing Party Application	
Comments on Non-Disputing Party submissions (if any were admitted by the Tribunal)	2 weeks from the date of the Tribunal's decision on the Non-Disputing Party Application	TBD

NOTE: For the avoidance of doubt, early submission of a pleading does not alter the Procedural Time Table above.

Annex 2

Document Production Schedule

Item	Term	Date
Claimant's First Request for Documents	Within 4 weeks from the date of P.O. No. 1	15 Aug. 2017
Respondent's objections to the RFD	2 weeks from the date of the request	29 Aug. 2017
Claimant's reply to objections	1 week from the date of the objections	5 Sept. 2017
Tribunal's decision	Within a reasonable time period from the date of the reply to objections	N/A
Production of disputed documents	Within a reasonable time period from the date of the Tribunal's decision on objections, as set forth by the Tribunal pursuant to §18.14	N/A
Production of undisputed documents	4 weeks from the date of the request	12 Sept. 2017
Respondent's First Request for Documents		
Respondent's First Request for Documents	Within 4 weeks from the due date of the Statement of Claim	5 Dec. 2017
Claimants' objections to the RFD	2 weeks from the date of the request	19 Dec. 2017
Respondent's reply to objections	1 week from the date of the objections	26 Dec. 2017
Tribunal's decision	Within a reasonable time period, weeks from the date of the reply to objections	N/A
Production of disputed documents	Within a reasonable time period from the date of the Tribunal's decision on objections, as set forth by the Tribunal pursuant to §18.14	N/A
Production of undisputed documents	4 weeks from the date of the request	2 Jan. 2018
Claimant's Second Request for Documents		
Claimant's Second Request for Documents	Within 3 weeks from the due date of the Statement of Defense	20 Mar. 2018
Respondent's objections to the RFD	2 weeks from the date of the request	3 Apr. 2018
Claimant's reply to objections	1 week from the date of the objections	10 Apr. 2018

Tribunal's decision	Within a reasonable time period from the date of the reply to objections	N/A
Production of disputed documents	Within a reasonable time period from the date of the Tribunal's decision on objections, as set forth by the Tribunal pursuant to §18.14	N/A
Production of undisputed documents	4 weeks from the date of the request	17 Apr. 2018
Respondent's Second Request for Documents		
Claimants' objections to the RFD	2 weeks from the date of the request	26 Jun. 2018
Respondent's reply	1 week from the date of the objections	3 Jul. 2018
Tribunal's decision	Within a reasonable time-period from the date of the reply to objections	N/A
Production of disputed documents	Within a reasonable time period from the date of the Tribunal's decision on objections, as set forth by the Tribunal pursuant to §18.14	N/A
Production of undisputed documents	4 weeks from the date of the request	10 Jul. 2018

Annex 3

Redfern Schedule

Request No.	1
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	

Request No.	2
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	

Request No.	3
Document / Category of Documents:	
Justification:	
Objections:	
Reply:	
Tribunal's decision:	