

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Legacy Vulcan, LLC

v.

United Mexican States

(ICSID Case No. ARB/19/1)

PROCEDURAL ORDER NO. 10

Members of the Tribunal

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

Prof. Sergio Puig, Arbitrator

Prof. Guido Santiago Tawil, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

Assistant to the Tribunal

Ms. Emily Hay

26 July 2023

I. INTRODUCTION

1. On 22 June 2023, the Tribunal invited the Parties to comment on a number of matters relating to the organization of the Hearing on the Ancillary Claim and Jurisdiction/Admissibility of the Counterclaim to be held remotely from 7-10 August 2023, with 10 August being a reserve day. In particular, the Tribunal requested the Parties to consider the extent to which the provisions of Procedural Order No. 6 dated 4 June 2021 (“**PO 6**”), which set out the arrangements for the first Hearing, would govern the upcoming Hearing on the Ancillary Claim and Jurisdiction/Admissibility of the Counterclaim (“**Hearing**”).
2. On 4 July 2023, the Tribunal, *inter alia*, circulated a draft Excel timetable and Hearing agenda, taking into account the notification of witnesses.
3. The Parties provided their comments on the organization of the Hearing on 7 July 2023, indicating a number of points on which they agreed and setting out their respective positions on matters which were not agreed.
4. After following up with the Parties regarding availability for an additional hearing day on 11 August 2023, the Tribunal issued directions resolving certain points on which the Parties disagreed, including the duration of the Hearing. The Tribunal invited the Parties to complete the draft Excel timetable on the basis of those directions.
5. On 16 July 2023, the Parties provided their respective estimates of time in the draft Excel timetable, which the Tribunal compiled and recirculated on 17 July 2023.
6. On 18 July 2023, a Pre-Hearing Conference between the Tribunal and the Parties was held in person in Playa del Carmen, Mexico, at which the organization of the Hearing was discussed.
7. Following the Pre-Hearing Conference, in the course of the site visit at Playa del Carmen, Mexico, from 18 to 20 July 2023, the Tribunal indicated to the Parties that they should focus their time at the Hearing on the matters to be addressed, and to refrain from

relitigating the entire case. The Parties indicated their readiness to receive any specific question in advance of the Hearing from the Tribunal in this respect.

8. On 25 July 2023, the United States and Canada separately advised their attendees for the Hearing. The United States indicated that it intends to deliver an oral non-disputing party submission, while Canada does not intend to deliver such a submission.
9. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing on the Ancillary Claim and Jurisdiction/Admissibility of the Counterclaim.

II. ORGANIZATION OF THE HEARING

10. Procedural Order No. 6 shall generally apply to the Hearing on the Ancillary Claim and Jurisdiction/Admissibility of the Counterclaim, subject to any adjustments indicated below or as otherwise directed by the Tribunal.
11. The Hearing shall take place from Monday 10 August to Friday 11 August 2023, with Friday 11 August being a partial Hearing day.
12. The Hearing is dedicated to the issues of: (i) Claimant's Ancillary Claim; and (ii) jurisdiction and admissibility matters relating to Respondent's Counterclaim. The Parties are invited to focus their submissions and evidence on these issues, and in particular, to address issues arising from the facts set out at §§ II.B, II.C and II.D of Claimant's Reply on the Ancillary Claim and §§ II.A, II.B, II.D, II.E and II.H of Respondent's Rejoinder on the Ancillary Claim. The Tribunal shall pose any further questions or issues for the Parties to address in the course of or at the conclusion of the Hearing.
13. The Hearing shall start each day at 7.15am Mexico City / 9.15am Washington, DC / 3.15pm CEST and finish each day at 1.30pm Mexico City / 3.30pm Washington DC / 9.30pm CEST, except for Friday, 11 August 2023 which is estimated to finish by 11.00am Mexico City / 1.00pm Washington, DC / 7.00pm CEST, subject to any adjustment determined by the Tribunal to be necessary prior to or in the course of the Hearing.

14. Each full Hearing day shall have two 15 minute breaks and one 40 minute lunch break.
15. Each Party shall have a maximum of 1h45m for its Opening Statement.
16. The sequence of the Opening Statements shall be: (i) Claimant's Opening Statement on the Ancillary Claim; (ii) Respondent's Opening Statement on the Ancillary Claim and Jurisdiction/Admissibility of the Counterclaim; (iii) Claimant's Opening Statement on Jurisdiction/Admissibility of the Counterclaim.
17. The United States oral NDP submission shall be heard on Monday, 7 August 2023 at the conclusion of the Parties' Opening Statements, as reflected in the attached updated Excel timing for the Hearing. A maximum of 30 minutes shall be reserved for that purpose, which has been added to the overall Hearing time.
18. The updated Excel timetable of 26 July 2023 shall serve as the estimated timing for the Hearing. The Parties are invited to draft a provisional agenda for the Hearing on the basis of the Excel by Friday, 28 July 2023, noting that in order to avoid down time and in accordance with PO 6, ¶ 18, each witness/expert shall be available for examination half a day before and after the time at which his/her examination is scheduled.
19. In lieu of Closing Statements, at the conclusion of the Hearing the Tribunal will consult with the Parties and determine the desirability of Post-Hearing Briefs on particular issues or questions, and if so, their timing and format.
20. The deadline for the Parties' comments on NAFTA Article 1128 Submissions and non-disputing party (amicus) submissions shall be 24 September 2023.
21. The test run for the hearing shall be held on Friday, 4 August 2023 at 8.30am Mexico City / 10.30am Washington, DC / 4.30pm CEST.

On behalf of the Tribunal,

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: 26 July 2023