

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER CHAPTER 11 OF THE NORTH
AMERICAN FREE TRADE AGREEMENT (NAFTA) AND
THE UNCITRAL ARBITRATION RULES (1976)**

KBR, INC.
v.
UNITED MEXICAN STATES
(ICSID Case. No. UNCT/14/1)

PROCEDURAL ORDER No. 1

Andrés Rigo Sureda, Presiding Arbitrator
Gabrielle Kaufmann-Kohler, Arbitrator
Gerardo Lozano Alarcón, Arbitrator

Secretary of the Tribunal
Luisa Fernanda Torres

April 1, 2014

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Introduction

The first session of the Tribunal was held on March 21, 2014, by telephone conference.

Participating in the conference call were:

Members of the Tribunal:

Andrés Rigo Sureda, Presiding Arbitrator
Gabrielle Kaufmann-Kohler, Arbitrator
Gerardo Lozano Alarcón, Arbitrator

ICSID Secretariat:

Gonzalo Flores

Participating on behalf of the Claimant:

Guillermo Aguilar-Álvarez, King & Spalding
Richard Marooney, King & Spalding

Participating on behalf of the Respondent:

Aristeo López Sánchez, Secretaría de Economía, United Mexican States
Adriana Pérez Gil Ochoa, Secretaría de Economía, United Mexican States
Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP
Sanjay J. Mullick, Pillsbury Winthrop Shaw Pittman LLP
Francisco Pucci, United Mexican States Embassy in Washington, DC

The Tribunal and the parties considered the following:

- The parties' communications of March 3, 2014, 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 Tribunal on March 13, 2014.
- The President referred to the disclosure made by him to the parties on March 20, 2014 regarding his possible appointment as president of a tribunal in a commercial arbitration where Mr. Doak Bishop of King & Spalding would be co-arbitrator. The parties had no objection to the appointment provided King & Spalding furnished a letter to Mexico assuring that Mr. Bishop will not be part of the representation of Claimant in the instant case. King & Spalding submitted such communication on March 27, 2014.

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- Professor Kaufmann-Kohler stated that she had changed her disclosure policy since her disclosure letter in this case, and in line with it she would promptly make disclosures to the parties. Professor Kaufmann-Kohler submitted such supplementary disclosure on March 25, 2014.

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

This first Procedural Order sets out Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

Article I UNCITRAL Arbitration Rules (1976)
Articles 1120(1)(c), 1120(2), 1139 of NAFTA,

1.1. These proceedings are conducted in accordance with the UNCITRAL Arbitration Rules (1976), except as modified by Section B, Chapter 11 of the North American Free Trade Agreement (“NAFTA”). The Tribunal takes note of the Respondent’s letter dated September 27, 2013 and Claimant’s letter dated October 1, 2013 on this issue.

2. Constitution of the Tribunal

Section II UNCITRAL Arbitration Rules (1976)
Articles 1123, 1124 of NAFTA

2.1. The Tribunal was constituted on February 12, 2014 in accordance with NAFTA and the UNCITRAL Arbitration Rules (1976). The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal are:

Andrés Rigo Sureda (President)
7002 Beechwood Drive
Chevy Chase, MD 20815
United States of America
Tel: + (1) 240-604-9037
Fax: +(1) 240-465-0799
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Fax +41 22 809 6201
Email: gabrielle.kaufmann-
kohler@lk-k.com

Gerardo Lozano Alarcón
Paseo de los Tamarindos 400
Torre B Piso 2
Col. Bosques de las Lomas
Mexico, D.F. 05120
Mexico
Tel: +52 (55) 526-11-800
Email: glozano@gylsc.mx

3. 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
 - 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. Decisions and Procedural Rulings of the Tribunal
Articles 31 and 32 of the UNCITRAL Arbitration Rules (1976)
 - 4.1. Any award or other decisions of the Tribunal shall be made by a majority of the arbitrators. In the case of questions of procedure, when there is no majority or when the Tribunal so authorizes, the Presiding Arbitrator may decide on its own, subject to revision, if any, by the Tribunal.
 - 4.2. The award shall be made in writing and be final and binding on the parties.
 - 4.3. 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.
5. Power to Set Time Limits
Article 23 of the UNCITRAL Arbitration Rules (1976)
 - 5.1. The Tribunal has the power to extend time limits if it concludes that an extension is justified.

6. Administering Authority

- 6.1. On March 19, 2014, 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.
- 6.2. The Tribunal Secretary is Luisa Fernanda Torres, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 6.3. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Luisa Fernanda Torres
ICSID – The World Bank
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-5018
Fax: + 1 (202) 522-2615
Email: ltorresarias@worldbank.org

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

Luisa Fernanda Torres
701 18th St, NW (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-5018

7. Representation of the Parties

Article 4 UNCITRAL Arbitration Rules (1976)

- 7.1. Each party shall be represented by its respective counsel and representatives listed below and may designate additional persons by promptly notifying such designation in writing to the other party, the Tribunal and the Tribunal Secretary.

For Claimant

Mr. Guillermo Aguilar-Álvarez
Mr. Richard T. Marooney
Ms. Ana Vohryzek

For Respondent

Mr. Carlos Véjar Borrego
Mr. Aristeo López Sánchez
Ms. Adriana Pérez Gil Ochoa

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Ms. Jessica Beess und Chrostin
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1185 Avenue of the Americas
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jbeessundchrostin@kslaw.com

Additional authorized e-mail:
mmgarcia@kslaw.com

Consultoría Jurídica de Comercio
Internacional
Secretaría de Economía
Alfonso Reyes #30, piso 17
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and

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Emails:
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aristeo.lopez@economia.gob.mx
adriana.perezg@economia.gob.mx
sbehar@naftamexico.net

8. Deposits of Costs

Articles 38 - 41 UNCITRAL Arbitration Rules (1976)

- 8.1. 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 Arbitration Rules (1976).
- 8.2. By letter of March 28, 2014 ICSID requested that Claimant pay US\$ 200,000 and Respondent US\$ 200,000 to defray the initial costs of the proceeding. Pursuant to Article 41(4) of the UNCITRAL Arbitration Rules (1976), payment shall be made within 30 days after the receipt of the request.
- 8.3. The Tribunal may request supplementary deposits from the parties as needed. Such requests will be accompanied by an interim statement of account.
- 8.4. 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.

9. Place of Arbitration

Article 16 UNCITRAL Arbitration Rules (1976)
Article 1130 of NAFTA

- 9.1. Ottawa shall be the place of the proceeding, and hearings shall be held in Washington D.C.

9.2. The Tribunal may meet at any location it considers appropriate for deliberations.

10. Procedural Languages and Translation
Articles 17 and 25 UNCITRAL Arbitration Rules (1976)

10.1. English and Spanish are the procedural languages of the arbitration, subject to the following provisions.

For Parties' Pleadings and Oral Presentations

10.2. Any written requests, applications, pleadings, expert opinions, witness statements, or accompanying documentation may be submitted in either English or Spanish.

10.3. A party shall not be required to provide translations into the other procedural language, except that, a party might be required to provide translations into English of documents submitted in Spanish if a member of the Tribunal so requests. Any such translations shall be submitted within a reasonable time period to be established by the Tribunal.

10.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation, or the Tribunal, specifically requests a certified version.

10.5. Oral presentations by the parties may be made in either English or Spanish. Each party is free to select which of the two procedural languages it will use in the oral proceeding, and in any other meeting or conference call with the Tribunal.

For Tribunal's Documents Except the Award

10.6. The Tribunal shall make any order or decision in either English or Spanish.

For Tribunal's Award

10.7. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be authentic.

For Secretariat Correspondence

10.8. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in either English or Spanish.

11. Routing of Written Communications

Article 15(3) UNCITRAL Arbitration Rules (1976)

- 11.1. Written communications in the case shall be transmitted by email or other electronic means at the same time to the parties, the Tribunal and the Tribunal Secretary, to the e-mail addresses in §§ 2.2, 6.3 and 7.1 above.
- 11.2. Electronic versions of communications ordered by the Tribunal to be filed *simultaneously* shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal after both parties' submissions have been received.
- 11.3. 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.

12. Number and Sequence of Pleadings

Article 21 UNCITRAL Arbitration Rules (1976)

- 12.1. By agreement of the parties, Respondent's objection to the sufficiency of Claimant's waiver under Article 1121 of NAFTA will be decided as a preliminary question. Pursuant to the parties' agreement, this is the only question submitted to the Tribunal at this stage.
- 12.2. The schedule for the submissions on the preliminary question shall be as follows:
 - 12.2.1. Respondent's Submission on Preliminary Question of Waiver shall be submitted by Friday, May 16, 2014;
 - 12.2.2. Claimant's Reply on Preliminary Question of Waiver shall be submitted by Monday, June 30, 2014;
 - 12.2.3. NAFTA Article 1128 Submissions by the United States and Canada shall be submitted by Wednesday, July 30, 2014;
 - 12.2.4. Respondent's and Claimant's Final Submission on Preliminary Question of Waiver shall be submitted by Thursday, August 14, 2014.
 - 12.2.5. The Tribunal takes note of the issue raised by Claimant and discussed during the conference call of whether the filing of the Notice of Arbitration tolled the statute of limitations under Articles 1116(2) and 1117(2) of NAFTA, and addressed further by Respondent's subsequent submission of March 24, 2014 and Claimant's reply of March 25, 2014.

13. Number of Copies and Method of Filing of Parties' Pleadings
Article 15(3) UNCITRAL Rules

13.1. Each party shall number the paragraphs of its written pleadings and each pleading shall include all factual and legal arguments in support thereof, including written witness statements, expert opinions or reports, exhibits and legal authorities.

13.2. By the relevant filing date of a pleading or submission, the parties shall submit by email to the Tribunal, the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and list of exhibits and legal authorities,¹ and upload the pleading with the supporting documentation to an FTP server provided by ICSID for this case.

13.2.1. The parties shall courier to the Tribunal Secretary at the address indicated at § 6.3 above by the following business day:

13.2.1.1. one unbound hard copy in A4/letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);

13.2.1.2. one hard copy in A5 format of the entire submission including the pleading as well as the witness statements, expert reports, and exhibits (but not including legal authorities); and

13.2.1.3. two USB drives with full copies of the entire submission, including the pleading as well as the witness statements, expert reports, factual exhibits, and legal authorities.

13.2.2. at the same time, courier to the opposing Party at the address(es) indicated at §7.1 above and each Member of the Tribunal at the addresses indicated at § 2.2 above:

13.2.2.1. one hard copy in A5 format of the entire submission including the pleading as well as the witness statements, expert reports, and exhibits (but not including legal authorities); and

13.2.2.2. one USB drive with a full copy of the entire submission, including the pleading as well as the witness statements, expert reports, factual exhibits, and legal authorities.

13.3. Legal authorities shall be submitted in electronic format only, unless a hard copy

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

² The A4/Letter format is required for ICSID's archiving.

is specifically requested by the Tribunal.

- 13.4. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).
- 13.5. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
- 13.6. 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.
- 13.7. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Submission of Documents

Article 24 of the UNCITRAL Arbitration Rules (1976)

- 14.1. Written pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.
- 14.2. The documents shall be submitted in the manner and form set forth in § 13 above.
- 14.3. Neither party shall be permitted to submit additional or responsive documents 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.
 - 14.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 14.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 14.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 24 of the UNCITRAL Arbitration Rules (1976).
- 14.5. The documents shall be submitted in the following form:
 - 14.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 14.5.2. The number of each Exhibit containing a document produced by Claimant 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

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document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

- 14.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 14.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 14.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 14.5.6. 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.
- 14.6. 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.
- 14.7. 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 copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.

15. Hearing

Articles 15(2) and 25 of the UNCITRAL Arbitration Rules

- 15.1. The oral procedure for the preliminary question shall consist of a one day hearing.
- 15.2. The hearing shall be held in Washington, D.C.
- 15.3. The date of the hearing shall be determined by the Tribunal at a later stage, prior consultation with the parties.
- 15.4. The Tribunal takes note of the parties’ agreement that the other NAFTA Parties (United States and Canada) might be present at the hearing.
- 15.5. A pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

The date shall be determined by the Tribunal prior consultation with the parties.

16. Records of Hearing and Sessions

Article 25(3) of the UNCITRAL Arbitration Rules (1976)

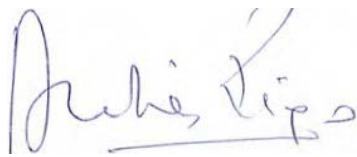
- 16.1. Sound recordings shall be made of the hearing and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 16.2. Verbatim transcripts in the procedural languages shall be made of the hearing and sessions other than sessions on procedural issues. Unless otherwise 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.
- 16.3. The parties shall agree on any corrections to the transcripts within 15 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 parties in the revised transcripts.

17. Publication

Article 32(5) of the UNCITRAL Arbitration Rules (1976)
Annex 1137.4 of NAFTA Chapter 11

- 17.1. The decision on the preliminary issue may be made public only with the consent of both parties.

On behalf of the Tribunal:



Andrés Rigo Sureda
Presiding Arbitrator
Date: April 1, 2014