

IN THE MATTER OF THE ARBITRATION PROCEEDINGS PURSUANT TO NAFTA  
CHAPTER 11 AND THE UNCITRAL RULES

BETWEEN

GAMI INVESTMENTS INC.

Claimant

AND

THE GOVERNMENT THE UNITED MEXICAN STATES

Respondent

Procedural Order No.4

25 September 2003



*Considering* paragraph 5.1 of Procedural Order No.1 and Procedural Orders No.2 and 3 of the Arbitral Tribunal;

*Considering* the Respondent's "Memorial on Jurisdictional Objections", dated 12 April 2003, and "Rejoinder on Jurisdictional Objections", dated 30 June 2003;

*Considering* the Claimant's "Reply to Respondent's Objections to Jurisdiction and Admissibility", dated 8 May 2003, and "Rejoinder on Jurisdiction", dated 4 August 2003;

*Considering* the "Submission of the United States of America", dated 30 June 2003;

*Considering* the Respondent's communication, under cover of a letter dated 10 September 2003, of the decision of the Mexican Court in *amparo* proceedings, dated 18 August 2003;

*Considering* the Respondent's uncontradicted representations to the effect that both sides have appealed the aforementioned court judgment;

*Considering* the oral submissions and answers to questions from the Arbitral Tribunal in the course of the hearings in Washington DC on 17 September 2003;

*Considering* the Claimant's factual allegations with respect to the merits as pleaded;

*Considering* the *prima facie* articulation of the Claimant's claims within the ambit of the text of Chapter 11 of the NAFTA;

*Considering* that although the Arbitral Tribunal is not convinced by the Respondent's thesis with respect to the meaning of the words "related to" (Article 1101(1)) or to the alleged proscription of "derivative" claims by virtue of the purported dichotomy of Articles 1116 and 1117, it cannot be excluded, especially in light of the oral debate, that the Arbitral Tribunal's reasoning will be effected by developments in the merits phase;

*Considering* therefore that the Arbitral Tribunal believes it prudent not to articulate a reasoned decision, particularly with respect to the admissibility of grievances of minority shareholders, until all facts have been determined with respect to all claims (including quantum);

*Considering* generally that the Parties' submissions revealed a significant potential overlap between issues of jurisdiction, admissibility and merits;

## THE ARBITRAL TRIBUNAL HEREBY RULES:

1. The Respondent has not satisfied the Arbitral Tribunal that its objections are sufficient to demonstrate a lack of jurisdiction in this Arbitral Tribunal with respect to the claims articulated by the Claimant or that such claims are otherwise inadmissible;
2. Given the potential influence of matters to be investigated at the merits on jurisdictional and admissibility issues, the Arbitral Tribunal reserves the ultimate resolution of these issues to its final award;
3. For the avoidance of doubt, the Arbitral Tribunal emphasises that it is satisfied with the thorough and cogent presentations by both sides with respect to the issues of jurisdiction and admissibility, and invites no further submissions in this regard (subject to the arbitrators' discretion to ask for specific observations or clarifications as may appear appropriate in light of future developments);
4. The Respondent is requested to file its Statement of Defence, together with witness statements, expert reports and documentary evidence, on 3 November 2003;
5. The Claimant shall file its Reply to the Respondent's Statement of Defence, together with any responsive witness statements, expert reports and documentary evidence, on 15 December 2003;
6. The Respondent shall file its Rejoinder to the Claimant's Reply, together with any responsive witness statements, expert reports and documentary evidence, on 2 February 2004;
7. Pursuant to paragraph 5.2 of Procedural Order No.1, at the latest following the conclusion of the written submissions referred to above, the Arbitral Tribunal shall fix dates for a status conference call with respect to the hearing and the possible exchange of post-hearing written submissions, as well as possible submissions by other NAFTA Parties.

  
Jan Paulsson  
for the Arbitral Tribunal