

PROCEDURAL ORDER No. 10

February 22, 2007

Glamis Gold, Ltd., Claimant

v.

The United States of America, Respondent

An Arbitration Under Chapter 11 of the North American Free Trade Agreement (NAFTA), in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, and administered by the International Centre for Settlement of Investment Disputes (ICSID)

**Michael K. Young, President
David D. Caron, Arbitrator
Kenneth D. Hubbard, Arbitrator**

I. Procedural Background

1. On January 31, 2006, the Tribunal issued Procedural Order No. 8, in which it outlined the procedures for the conclusion of the pre-hearing production phase of this arbitration. In addition, in recognition of the extensive nature of the document production process and the need for time for the Parties to evaluate the documents produced as a part of their memorial submissions, the Tribunal also took the opportunity in Procedural Order No. 8 to present an amended arbitral schedule.
2. On April 21, 2006, the Tribunal issued its Decision on Requests for Production of Documents and Challenges to Assertions of Privilege. This Decision and Respondent's subsequent production of ten specified documents concluded the pre-hearing production phase of this arbitration.
3. With production of documents completed, the Parties timely submitted their Memorial and Counter-Memorial as required by Procedural Order No. 8, with only a minimal extension granted by the Tribunal in its letter of April 25, 2006.
4. On October 20, 2006, Claimant requested a four or five-week extension to file its Reply citing certain difficulties with some of its experts and witnesses. In making this request, Claimant recognized that such an extension could necessitate an equal extension for Respondent's filing of its Rejoinder and thus require the delay of the final arbitral hearing. Therefore, Respondent requested either December 8, 2006 as the deadline for its Reply if the final arbitral hearing was not delayed, or December 15, 2006 if such an extension required a postponement of the hearing.
5. Respondent expressed its views on this request in a letter to the Tribunal on October 23, 2006. Respondent contended that the circumstances cited by

Claimant did not justify the extension and that such an extension would leave insufficient time for the numerous pre-hearing requirements and thus would necessitate postponing the hearing. Respondent further argued that its briefing schedule made it extremely difficult for it to revise the hearing dates. Respondent, therefore, requested the denial of Claimant's extension request, but argued alternatively that, if the Tribunal granted the extension, the hearing had to be postponed.

6. On October 31, 2006, the Tribunal issued Procedural Order No. 9 in which it stated that it was "aware of its dual responsibility to keep the arbitration schedule moving effectively forward and to ensure that both parties have the opportunity to develop and present reasoned and supported arguments." The Tribunal believed that the circumstances described by Claimant impaired its ability to effectively prepare its case and thus an extension was required, though this necessitated adjustment to the hearing dates. A revised schedule was presented extending the deadlines for the submissions of both Claimant's Reply and Respondent's Rejoinder. The arbitral hearing was tentatively scheduled in May of 2007, and the Tribunal explained that the Assistant to the Tribunal would contact the Parties to ascertain their availability within that time period.
7. In informal discussions with the Assistant to the Tribunal, Respondent stated its inability to reschedule the hearing in the month of May due to prior commitments. In addition, Respondent requested that the deadline for its Rejoinder be extended until March 15, 2007, both due to scheduling difficulties and to receive an equal preparation time to that which Claimant was afforded in Procedural Order No. 9.
8. By email correspondence on November 10, 2007, the Assistant to the Tribunal informed both Parties of the Tribunal's decision to grant Respondent's requested extension until March 15, 2007, for the submission of its Rejoinder.
9. On December 15, 2007, the Tribunal sent the Parties a letter confirming adjustments to the arbitral schedule to which the Parties had agreed previously in informal discussions with the Assistant to the Tribunal. This letter confirmed that the final arbitral hearing would be held in Washington, D.C. on August 13 to 17, 2007 and, as necessary, September 17 to 21, 2007. In confirming these dates, the Tribunal stated its appreciation for the concerns expressed by Respondent regarding the division of argument between the two weeks. The Tribunal assured the Parties that it would determine the division in a manner that ensured fairness for both Parties, both in general at present and again, in specificity, at the pre-hearing procedural hearing. The inclination of the Tribunal was to structure the hearing on an issue-by-issue basis, with the exact number, order and time limits of each issue determined at the pre-hearing procedural hearing.

10. In this December 15 letter, the Tribunal also made three requests of the Parties. First, the Tribunal asked the Parties to consult with each other and communicate to the Tribunal any agreement, or other information, regarding their views on a possible structure for the hearing. Second, the Tribunal recalled that, at the first session, it was thought that the hearing might require only one week; the Tribunal stated that it would like to use as much of the second week as possible for deliberations. The Tribunal therefore requested that if the Parties, after consultation with each other, believed that the hearing would take appreciably longer than one week, they communicate this information to the Tribunal in the near future. Finally, the Tribunal requested information from the Parties regarding their availability for the pre-hearing procedural hearing on June 28, 2007.

II. The Views of the Parties

11. On February 20 and 21, 2007, the Parties informed the Assistant to the Tribunal of their availability for the pre-hearing procedural hearing on June 28, 2007. The Parties had not yet had the opportunity, however, to discuss with each other the anticipated length of the hearing or possibilities for the hearing structure.

III. Decision

12. The Tribunal, therefore, confirms the following amendments to the arbitral schedule:

December 15, 2006:	Submission of Claimant's Reply
March 15, 2007:	Submission of Respondent's Rejoinder
June 14, 2007:	Submission of Witness Lists
June 28, 2007:	Pre-Hearing Procedural Hearing
August 13 - 17, 2007	Arbitral Hearing
and, as necessary,	
September 17 - 21, 2007	


Michael K. Young

President of the Tribunal on behalf of the Tribunal

David D. Caron, Tribunal Member
Kenneth D. Hubbard, Tribunal Member