

Notice of Arbitration under the Arbitration Rules of the United  
Nations Commission on International Trade Law and the North  
American Free Trade Agreement

Aluminios de Choluca, S.A.

Investor

v.

Government of the United States

Party

September 14, 2016

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Pursuant to Article 3 of the United Nations Commission on International Trade Law ("UNCITRAL") Rules of Arbitration and Articles 1116 and 1120 of the North American Free Trade Agreement ("NAFTA"), the Investor, Aluminios de Choluca, S.A., initiates recourse to arbitration under the UNCITRAL Rules of Arbitration (Resolution 31/98 Adopted by the General Assembly on December 15, 1976, as revised in 2010).

## **A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION**

Pursuant to Article 1120(1)(c) of NAFTA, the Investor hereby demands that the dispute between it and the Government of the United States of America ("United States") be referred to arbitration under the UNCITRAL Arbitration Rules.

Pursuant to Article 1119 of NAFTA, the Investor delivered a Notice of Intent to Submit a Claim to Arbitration to the United States on May 13, 2016, more than ninety days prior to the submission of this claim.

Pursuant to Article 1121 of NAFTA, the Investor consents to arbitration in accordance with the procedures set out in NAFTA. The Investor hereby waives its right to initiate or continue before any administrative tribunal or any court, or any other dispute settlement procedures, any proceedings with respect to the measures outlined herein, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving payment of damages, before an administrative tribunal or court under the laws of the United States. The Investor's executed consents and waivers are attached to this Notice of Arbitration. The Investment, Galactic Bauxite Quarry Works Inc. (U.S.), has also executed a waiver as required by NAFTA Article 1121(1)(b).<sup>1</sup>

## **B. NAMES AND ADDRESSES OF THE PARTIES**

The Investor is:

Aluminios de Choluca, S.A.; Avenida de la República, 44; Mexico CDMX, Mexico

The Government of the United States is a Party to this arbitration. It is represented by:

Office of the Deputy Attorney General of the United States  
324 Judiciary Street, NW  
Washington, D.C. 20054  
United States of America

## **C. ARBITRATION CLAUSE OR SEPARATE ARBITRATION AGREEMENT**

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<sup>1</sup> Consent and Waiver of Galactic Bauxite S.A., attached as Exhibit 1. The waiver of Galactic Bauxite Quarry Works (U.S.) Inc. is attached as Exhibit 2.

## **INVOKED**

The Investor invokes Section B of Chapter 11 of NAFTA, and specifically Articles 1116, 1120 and 1122 of NAFTA, as authority for this arbitration. Section B of Chapter 11 of NAFTA sets out the provisions concerning the settlement of disputes between a Party and an investor of another Party.

## **D. CONTRACT OUT OF OR IN RELATION TO WHICH THE DISPUTE ARISES**

The dispute is in relation to the Investor's investment in the United States and the damages that have arisen out of the United States's breach of its obligations under Section A of Chapter 11 of the NAFTA.

## **E. THE GENERAL NATURE OF THE CLAIM**

### **I. THE INVESTMENT**

1. This claim arises from basic unfairness and abuse of the land use planning and licensing approval process by self-interested political insiders who applied unfair, non-transparent and secret regulatory procedures to circumvent the standard approval process and then prevent their victim from being able to obtain any meaningful independent review of outrageous governmental measures.

2. The victim of this unfair behavior is Galactic Bauxite Quarry Works Inc. (U.S.)<sup>2</sup> ("GBQW", "Galactic", or the "Investment"), a U.S. investment that is owned and controlled by Aluminios de Choluca, S.A.,<sup>3</sup> a Mexican company, who is the Investor in this claim.

3. Aluminios de Choluca was founded in 1912 by two Mexican pioneers in experimenting with alloys. The company became famous over time in Mexico for producing alloys that were used in the State-owned oil extraction companies in the 1940s and 1950s. Since then, the company has remained very close to several Mexican state-owned companies, winning bids to produce drillheads and other alloy material used in oil production. The company remained in operation in Mexico for nearly one hundred years, until it declared bankruptcy in 1999. After the bankruptcy proceeding, GBQW bought the remains of the company on October 18, 2015 for the symbolic purchase price of \$1 USD. Subsequently, GBQW transferred the property of Aluminios de Choluca, S.A. to its holding company, the Hanoi Group of Companies, based in Vietnam, and, in turn, Aluminios de Choluca became the main shareholder of GBQW.

4. On June 20, 2011, GBQW took over an aggregate quarry permitting application already underway for lands it had acquired located at the Route 24 West at Upper River Line in the City of Somerset (the former Township of East Colesville) (the "Quarry Site") with a view to commence bauxite quarrying for supply to an aluminum production plant located in Hawesville,

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<sup>2</sup> Galactic Bauxite Quarry Works Inc. (U.S.) Articles of Operation (Document Annex at Tab 1).

<sup>3</sup> Mexico CDMX Certificate of Formation (Document Annex at Tab 2).

KY. The proposed Galactic bauxite quarry would have employed approximately 180 full-time positions. The Quarry Site comprises 95 hectares, with quarrying operations on approximately 35 hectares, leaving over 60% of the total area undisturbed.<sup>4</sup> The proposed quarry contains bauxite that is recognized as one of the highest quality resources for aluminum ore in the U.S. state of Georgia. The high-quality aluminum ore obtained in this quarry was going to be used in construction materials, electronic devices, and military equipment.

5. A number of aggregate quarries operate in close proximity to the Quarry Site, with the total area licensed for extraction noted by the City of Somerset as 811 hectares.<sup>5</sup> The local Official Plan for the Quarry Site identified the area as containing significant mineral resources<sup>6</sup> and includes a “Mineral Concentration Area” that overlays with parts of the Quarry Site. The Official Plan had been approved by the government of Georgia.<sup>7</sup> The City of Somerset zoning bylaws permitted any property owner in this location to seek an amendment of zoning from agricultural use to extractive industry use.<sup>8</sup>

6. Galactic followed the process to obtain approval for its new quarry in Colesville. Galactic required the following before it could obtain approval for its quarry:

a. A *Water Pumping Permit* under the *Georgia Water Resources Act*;

b. A License under the *Georgia Aggregate Resources Act*; and

c. Approval to change the use of the land from agricultural to extractive industrial use.

7. Applications for planning approvals for the Quarry Site were initiated in September 2009 by Georgia Aluminum Holdings Corp.<sup>9</sup> Galactic took over responsibility for the planning application in June 2011.

8. Galactic voluntarily held a series of local open houses and community meetings and provided citizens with detailed plans and access to technical experts on how it would deal with the development of a quarry in a sustainable manner. Galactic encouraged dialogue with the local agencies and hosted several tours of the Quarry Site.

9. From 2011 onwards, concerns were raised over the effect of the planned quarry on water quality by the City of Somerset, the Regional Municipality of Ellaville, and Conservation Ellaville,

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<sup>4</sup> Galactic Bauxite Colesville Presentation May 25, 2014 (Document Annex Tab 3).

<sup>5</sup> City of Somerset, *The Rural Somerset Profile*, January 2011, at 8 (Document Annex at Tab 4).

<sup>6</sup> City of Somerset Official Plan, "Appendix C, Non-Renewable Resources", August 25, 2014 (Document Annex at Tab 5).

<sup>7</sup> Somerset-Ruthworth Official Plan, June 2010 (Document Annex at Tab 6).

<sup>8</sup> *Ibid.*

<sup>9</sup> Application for Planning Document Amendment: Official Plan, September 16, 2009 (Document Annex at Tab 7).

a local NGO.<sup>10</sup> The Investment provided written response to these concerns, and proposed further field-testing.

## II. THE WATER PUMPING PERMIT APPLICATION

10. On September 28, 2011, the Investment applied to the Department of the Environment ("DOE") for a Category 3 temporary Water Pumping Permit ("WPP") to conduct three phases of pumping tests on the subject property.<sup>11</sup> This type of testing is routinely required for quarry applications.

11. During this time period an opposition group to the quarry, self-described as REJECT Dirty Mining in Favor of Our Rural Communities and the Environment ("REJECT"), requested that the Georgia Department of Natural Resources ("DNR") and the Department of Municipal Affairs and Housing ("DMAH") intervene to prevent Galactic from quarrying. This demand was rejected by the DMAH and by the DNR on May 2, 2013,<sup>12</sup> stating that the public interest does not warrant a review of the approvals mechanism relating to aggregate developments. REJECT's membership consisted of several former Georgia government officials with property interests adjacent to the quarry zone. They continued exercising pressure on the government to have Galactic's permit applications rejected.

12. Throughout March and April 2013, the Investment took proactive steps by convening community meetings to discuss the *WPP* application with local residents.<sup>13</sup>

13. On July 8, 2013, nearly two years after the *WPP* application had been made, the DOE permitted the Investment to commence pumping tests using a phased approach.<sup>14</sup>

14. The Investment provided the Phase 1 pumping results to the DOE on August 27, 2013, which clearly demonstrated that there were no adverse impacts on the quality or quantity of local water resources.<sup>15</sup> On September 24, 2013, the Investment requested that the DOE allow it to proceed to Phase 2 test pumping.<sup>16</sup>

15. On September 29, 2013, several groups opposed to the quarry began lobbying the DOE to deny the Investment Phase 2 of test pumping simply due to above-average levels of rainfall

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<sup>10</sup> Briefing Note prepared for the Head of Department of Municipal Affairs and Housing, April 14, 2015 (Document Annex Tab 50).

<sup>11</sup> Letter from Leroy Walker to Department of Environment, September 28, 2011 (Document Annex at Tab 10).

<sup>12</sup> Letter from Department of Municipal Affairs and Housing to Mark Rubin and Tom Clear, Chairman of REJECT, May 2, 2012 (Document Annex at Tab 11).

<sup>13</sup> Galactic Bauxite Colesville Quarry, Community Newsletter Issue No. 8, Spring 2013 (Document Annex at Tab 12).

<sup>14</sup> Department of Environment Water Pumping Permit No. 8461-7CFLG5, July 8, 2013 (Document Annex at Tab 13).

<sup>15</sup> Phase 1 Pumping Test Report prepared by Leroy Walker, August 27, 2013 (Document Annex at Tab 14).

<sup>16</sup> Letter from Emily Wagner (GBQW) to Mike Ohms (DOE), September 24, 2013 at 1 (Document Annex at Tab 15).

during Phase 1 test pumping.<sup>17</sup> Accordingly, on October 30, 2013, the DOE refused permission to Galactic to commence Phase 2 pumping without providing Galactic with any meaningful opportunity to respond.<sup>18</sup>

16. In light of not providing Galactic with an opportunity to respond, the Investment sought to discuss with the DOE how to proceed with the regulatory process.<sup>19</sup> The DOE demanded that the Investment re-commence Phase 1 test pumping.

17. After the DOE threatened to revoke the *WPP*, Galactic requested the DOE to provide adequate assessment criteria. The company also asked for the opportunity to provide further data to the DOE, but the Department rejected this offer.

18. On June 30, 2014, the *WPP* expired without any further testing having occurred.<sup>20</sup>

19. Despite the lapse of the first *WPP*, Galactic and the DOE eventually established a new testing program, which led to a new *WPP* application filed on May 25, 2015 by Galactic.<sup>21</sup> However, on June 3, 2015, the DOE refused to consider this new *WPP* application without providing any reasons.<sup>22</sup>

20. In February 2016, Galactic submitted another application for a *WPP* to allow additional aquifer testing.<sup>23</sup> The DOE again wrongfully refused Galactic's February 2016 application due to the Department's Territorial Zoning Order ("DTZO") issued by the Head of Department of Municipal Affairs and Housing.<sup>24</sup> The DOE refused this application without performing a technical review of the *WPP* application.

21. During this timeframe, the DOE acted in a discriminatory and arbitrary manner by issuing *WPPs* to other national and international applicants for pumping tests in quarry applications, in similar circumstances. In addition, other mineral producers of iron and copper ore were also

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<sup>17</sup> Letter from REJECT to Department of Environment, September 29, 2013 (Document Annex at Tab 16); EXTERNA Engineering Ltd., Review of GRS Phase I Pumping Test Report for REJECT, September 28, 2013 (Document Annex at Tab 17).

<sup>18</sup> Letter from Department of Environment to Galactic Bauxite Quarry Works Inc. (U.S.), October 30, 2013 (Document Annex at Tab 18).

<sup>19</sup> Letter from Galactic Bauxite Quarry Works to Department of Environment, January 22, 2014 (Document Annex at Tab 19).

<sup>20</sup> Briefing Note prepared for Head of Department of Municipal Affairs and Housing, April 14, 2010 (Document Annex Tab 50).

<sup>21</sup> Water Pumping Permit Application prepared by Goldberg Associates Ltd., May 25, 2015 (Document Annex at Tab 21).

<sup>22</sup> Letter of Department of Environment to Galactic Bauxite Quarry Works Inc., June 3, 2015, at 3 (Document Annex at Tab 23).

<sup>23</sup> Permit to Take Water Application prepared by Goldberg Associates Ltd, February 23, 2016 (Document Annex at Tab 22).

<sup>24</sup> Letter of Department of Environment to Galactic Bauxite Quarry Works Inc., April 8, 2016 (Document Annex at Tab 24).

granted permits.

### III. THE *AGGREGATE RESOURCES ACT* APPLICATION

22. On January 22, 2014, the Investment formally submitted an *Aggregate Resources Act* application ("*ARA* Application") to the Department of Natural Resources, after having informed the DOE and the City of Somerset on the same day of its intention to file an *ARA* Application.<sup>25</sup>

23. On March 3, 2014, the DNR deemed Galactic's *ARA* Application complete, allowing the Investment to proceed to a notification and consultation phase and a forty-five day comment period could begin.<sup>26</sup>

24. The City of Somerset Council passed a resolution on April 15, 2014, that called for the rejection of Galactic's *ARA* Application.<sup>27</sup> The resolution was laced with inaccurate and defamatory portrayals of Galactic's actions during the permit review process. For instance, the resolution erroneously stated that Galactic had a "complete disregard for the... community."<sup>28</sup> Galactic wrote to the City of Somerset protesting the arbitrary, discriminatory and unfair depictions of the company. The City of Somerset's resolution also had the effect of prejudicing the permit applications of Galactic Bauxite by perpetuating falsehoods in the local community.

25. The City of Somerset informed Galactic on May 20, 2014 that it would object to the *ARA* Application.<sup>29</sup> Somerset objected despite the fact that approval of the *ARA* Application was singularly within the domain of the DNR.

26. One of the reasons raised by the City of Somerset was the lack of completion of a Haul Route Study, even though a Haul Route Study is not a requirement of an Application under the *Aggregate Resources Act*.<sup>30</sup>

27. On May 21, 2014, the objection period for the *ARA* Application lapsed. On that date, the DOE wrote to the Investment stating that it objected to the Investment's *ARA* Application.<sup>31</sup>

28. Also on May 21, 2014, the DNR officially informed Galactic that it would not support Galactic's *ARA* Application until further information was provided about the impacts of the

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<sup>25</sup> Galactic Bauxite Press Release "Galactic Bauxite Begins Licensing Process Under *Aggregate Resources Act*", January 30, 2014 (Document Annex at Tab 25).

<sup>26</sup> Letter of Department of Natural Resources to Galactic Bauxite Quarry Works Inc. (U.S.) March 3, 2014 (Document Annex at Tab 26).

<sup>27</sup> Somerset City Council Minutes, April 15, 2014, at 9 (Document Annex at Tab 27).

<sup>28</sup> Ibid.

<sup>29</sup> Letter from Pete Lewis (Galactic) to Petra Sommer (City of Somerset), June 24, 2014, at 1 (Document Annex at Tab 28).

<sup>30</sup> *Aggregate Resources Act*, *Georgia State Gazette* 1990, c.A8 (Document Annex at Tab 30).

<sup>31</sup> Briefing Note prepared for Head of Department of Municipal Affairs and Housing, April 14, 2015 (Document Annex Tab 50).

quarry on groundwater and natural features in the area.<sup>32</sup>

29. In response to the DNR's concerns, Galactic applied on December 18, 2014 for a *WPP* to carry out a field test to verify the proposed mitigation strategy of a ground recirculation system.<sup>33</sup>

30. On December 19, 2014, the DOE's Regional Director contacted the Investment asking it to withdraw the application, and directed it to carry out a series of consultations with technical stakeholders. Those meetings commenced on December 21, 2014 and continued until March 2015. The DOE wrongfully terminated the consultations due to the issuance of the DTZO in April 2015.

31. Throughout the *ARA* Application process, Galactic invested more than \$20 million dollars in the project to thoroughly comply with the regulatory requirements in good faith, and at all times expected that the *ARA* Application would be judged on its technical merits. However, the arbitrary and unreasonable requirements and restrictions imposed by the DOE during this four-year time period, and the unfounded and discriminatory objections of the City of Somerset and the Regional Municipality of Ellaville before the issuance of the DTZO prevented Galactic from obtaining the required approvals to operate the proposed quarry.

#### IV. THE DEPARTMENT'S ZONING ORDER

32. The Head of Department of Municipal Affairs and Housing has the authority to issue a Department's Territorial Zoning Order ("DTZO") through a delegation of authority under Section 47(1) of the *Planning Act* of Georgia. A DTZO controls the use of land by setting "specific requirements for new development."<sup>34</sup> It prevails over inconsistent municipal by-laws.<sup>35</sup>

33. The *Planning Act* specifically contemplates independent judicial review of a DTZO. It provides that the Head of Department must, on the request of any person or public body, refer a hearing to the Georgia Municipal Board as to whether the DTZO should be amended or revoked in whole or in part and specifically permits an appeal of a DTZO to the Georgia Municipal Board.<sup>36</sup> The Georgia Municipal Board has the statutory power to either amend or revoke a DTZO in whole or in part, and the decision of the Board is binding on the

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<sup>32</sup> Department of Natural Resources to Galactic Bauxite Quarry Works Inc. (U.S.) May 21, 2014 (Document Annex at Tab 32).

<sup>33</sup> Technical Support Document GRS Proof of Concept Testing Program prepared by Goldberg Associates Ltd., May 20, 2010, at 5 (Document Annex at Tab 33).

<sup>34</sup> Application Guide: Applying to amend or revoke a Departmental Zoning Order Frequently Asked Questions, Department of Municipal Affairs and Housing (Document Annex Tab 45).

<sup>35</sup> Planning Act, *Georgia State Gazette* 1990, Chapter P. 13, s. 47 (2) (Document Annex Tab 46).

<sup>36</sup> Planning Act, *Georgia State Gazette* 1990, Chapter P. 13, s. 47 (2) (Document Annex Tab 46); Pursuant to s. 47(11) of the *Planning Act*, the Head of Department may refuse such a request if the request does not disclose any apparent land use planning ground, is not brought in good faith or is frivolous or vexatious, or the request is made only for the purpose of delay.



government.<sup>37</sup>

34. On April 12, 2015, then-Municipal Affairs and Head of the Department of Housing, Tom Sawyer, issued a Zoning Order freezing the current land use designation of the Quarry Site. Other lands that exist in the local area were unaffected by the DTZO. No notice was given to Galactic of this action which had the effect of freezing the agricultural zoning of the Investment's Quarry Site. The Department's Zoning Orders are rarely used and had never previously been used in connection with an aggregate quarry.

35. Galactic commenced an application to the Georgia Municipal Board (GMB) to revoke or amend the DTZO in the belief that the Board would overturn this unprecedented unilateral action.<sup>38</sup>

36. The exercise of these extraordinary powers was also for the political gain of the governing Georgia Liberal Party, which sought to obtain the political support of the local quarry opponents in the next provincial election on October 6, 2016.

37. The local riding where the Quarry Site is situated is Somerset-Pontak-Colesville-Eastminster. The local member of the Georgia Congress, Ted Burns, won this seat for the Liberal Party in 2007 by a razor thin 6.7% percent margin. Mr. Burns served as Head of the Department of Government Services and also as Head of the Department of Consumer Services in the current Georgia Liberal government. At the time of the DTZO, Mr. Burns had been demoted from the Cabinet but continued in the executive branch of government as the Deputy Head of the Department of Training, Colleges and Universities. He continues in this position.

38. Galactic was able to obtain numerous documents relating to the Georgia Government's actions against Galactic's proposed quarry under the *Freedom of Information Act (FOIA)*. One document shows that on the eve of the DTZO announcement, Joe Kim, the Press Secretary to then-Head of Department of Municipal Affairs and Housing, Tom Sawyer, counseled Mr. Burns, to "trumpet your success" at the local level.<sup>39</sup> He told Mr. Burns to do a multi-day celebration to get "the most media bang for our buck." He further suggested a victory party complete with "a giant cake, some music, etc."<sup>40</sup>

39. Another document obtained was a private briefing note prepared on April 14, 2015 for the Head of the Department of Municipal Affairs and Housing about his powers to use the DTZO.<sup>41</sup> These internal government documents indicated that the Head of the Department could keep the DTZO process secret and could even keep the decision of the DTZO secret from the

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<sup>37</sup> Planning Act, *Georgia State Gazette* 1990, Chapter P. 13, s. 47 (2) (Document Annex Tab 46).

<sup>38</sup> Request to Amend or Revoke Departmental Zoning Order Georgia Regulation 546/06, April 23, 2015 (Document Annex Tab 48).

<sup>39</sup> Email from Pete Hein (DMAH) to Sandra Kramer (DMAH), March 31, 2015, at 1 (Document Annex Tab 49).

<sup>40</sup> Ibid.

<sup>41</sup> Briefing Note prepared for Head of Department of Municipal Affairs and Housing, April 14, 2015 (Document Annex Tab 50).

affected company for up to 30 days.<sup>42</sup> The briefing note also disclosed that the effect of a DTZO did not prevent applications related to the quarry from being processed by the provincial or municipal governments.<sup>43</sup>

40. The April 14, 2015 briefing note stated that the effect of a DTZO was that:

A DTZO prevails over local zoning bylaws and controls the use of land (whether restricting or permitting uses).

The DTZO does not control activities carried on with respect to the land or stop the processing of other regulatory approvals.<sup>44</sup>

41. Despite the fact that the DTZO did not freeze the processing of permits while it was under appeal, local governments, including the City of Somerset, the regional municipality of Ellaville, and the Georgia Government, through the DOE, simply and unlawfully refused to continue processing necessary permit applications for Galactic. The company's lawyers wrote to the relevant departments advising that such action was unlawful, but the various governmental bodies simply refused to carry out any service to Galactic.<sup>45</sup>

42. The DOE took the unlawful position that the current zoning of the land in light of the DTZO, which was an issue wholly divorced from the requirements of test pumping for the purposes of a *WPP* application, did not permit quarrying.<sup>46</sup> In doing so, the DOE relied on irrelevant considerations in making such a decision.

## **V. DECLARATION OF REGIONAL INTEREST**

43. The Head of the Department of Municipal Affairs and Housing may notify the Georgia Municipal Board through a Declaration of Regional Interest ("DRI") if he or she is of the opinion that a matter of Regional Interest is, or is likely to be, adversely affected by a requested amendment or revocation of a DTZO.<sup>47</sup> A DRI removes the binding review authority of the Georgia Municipal Board (GMB). It leaves the Georgia cabinet as the only body with the authority to review the appropriateness of the conduct of one of its members.

44. On April 20, 2016, the Head of the Department of Municipal Affairs and Housing took another unilateral regulatory step that removed permanently Galactic's right to obtain any independent binding review of the DTZO. This was accomplished by the issuance of a

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Letter from Peter Glucksman (Galactic) to Carl Lehman (Department of Environment) and the Secretary of the Environmental Review Tribunal, June 11, 2015, at 3-4 (Document Annex Tab 51).

<sup>46</sup> Letter of Department of Environment to Galactic Bauxite Quarry Works Inc., June 3, 2015, at 3 (Document Annex Tab 23).

<sup>47</sup> Planning Act, *Georgia State Gazette* 1990, Chapter P. 13, s. 47 (13.1) (Document Annex Tab 46).

Declaration of Regional Interest by the Head of Department of Municipal Affairs and Housing.<sup>48</sup> The Declaration of Regional Interest was issued without consultation or prior notice of any kind to Galactic. Like the DTZO, the Declaration only had impact on GBQW and not to any other landowner in the same area.

45. The purported grounds for the Declaration of Regional Interest ("DRI") were:

- (a) the protection of ecological systems, including natural areas, features and functions;
- (b) the supply, efficient use and conservation of water;
- (c) the resolution of planning conflicts involving public and private interests;
- (d) the protection of public health and safety; and
- (e) the appropriate location of growth and development.<sup>49</sup>

46. No specific reasoning for the issuance of the DRI was provided nor any evidence of any good faith nexus to any of these public policy grounds. The DRI merely restated the same list of potential grounds set out in the Head of Department's April 14, 2015 briefing note.

47. The effect of the DRI is that the decision of the GMB is no longer binding and the final decision rests solely with the Government of Georgia. While Galactic could continue its appeal before the GMB, once the DRI was issued, there would be no force or effect to any decision taken by the GMB. Any decision would be irrelevant as the only decision maker would be the Head of Department of Municipal Affairs and Housing and the Cabinet of the Georgia Government.

48. The DRI, like the DTZO, was made without any notice or warning to Galactic, despite the serious prejudice the DRI would cause to the proposed quarry. By failing to reasonably provide Galactic with notice of the impending DTZO and DRI, Galactic was denied the opportunity to present its position prior to the taking of final administrative action that affected Galactic and its Investment. Galactic was also denied a secure legal environment.

## **F. BREACH OF OBLIGATIONS**

49. The Investor claims that the United States has violated at least the following provisions of

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<sup>48</sup> Declaration of Regional Interest, Hon. Rick Bartolucci (DMAH) to Patrick Hennessy (Georgia Municipal Board), April 20, 2016 (Document Annex at Tab 52).

<sup>49</sup> Declaration of Regional Interest, Hon. Rick Balder (DMAH) to Joanne Harris (Georgia Municipal Board), April 20, 2016, at 1 (Document Annex at Tab 52).

Section A of NAFTA Chapter 11:

Article 1102 - National Treatment

Article 1103 - Most Favored Nation Treatment

Article 1105 - International Law Standards of Treatment

Article 1110 - Expropriation

These breaches have resulted in damage to the Investor.

### **National Treatment**

50. NAFTA Article 1102 obliges NAFTA parties to treat investors from other NAFTA members and their investments as favorably as it treats domestic investors and their investments operating in like circumstances.

51. The United States treated the Investor and its Investment less favorably than domestic investors operating in like circumstances. The issuance of the Departmental Zoning Order only affected the Investor's property. No other investor or investment in like circumstances was treated in such an undesirable manner. Furthermore, the Declaration of Regional Interest, which was specifically made against the Investor's property, made the damage permanent but did not provide the same poor treatment against a domestic investor or investment in like circumstances.

52. Each of the ways in which the United States and Georgia treated the Investor and its Investment less favorably than other U.S. investors and investments in like circumstances constitutes a violation of NAFTA Article 1102.

### **Most Favored Nation Treatment**

53. Under NAFTA Article 1103, the United States must provide Galactic with treatment no less favorable than that provided to foreign investors or investments under other international agreements to which the United States is a party. The United States has failed to meet this obligation. Article 1103 entitles Galactic and its investment to receive the best level of treatment available to any foreign investors or investments in Georgia.

54. The United States afforded treatment less favorable to the Investors than non-NAFTA Party investors in like circumstances, as no other non-NAFTA party investors were subjected to the exercise of unilateral executive orders such as the Departmental Zoning Order or the Declaration of Regional Interest. Through the use of these executive orders, the United States treated the Investment less favorable than investments of investors from other NAFTA Parties and from non-NAFTA Parties.

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## **International Law Standard of Treatment**

55. NAFTA Article 1105 sets out the international law standard of treatment that a NAFTA Party is obliged to accord investments of another NAFTA Party. The United States must ensure that the Investment receives treatment in accordance with the international law standard of treatment, including fair and equitable treatment, freedom from discrimination, and full protection and security.

56. The rejection of the Investor's project constituted a continuing course of arbitrariness, discrimination, and procedural unfairness. These measures constituted a failure to provide fair and equitable treatment to the Investment. The United States violated its Article 1105 obligation through the Government of Georgia's unfair, arbitrary and discriminatory actions. These include, but are not necessarily limited to, the following:

a. Throughout all of the following regulatory processes, Galactic was denied the opportunity of a fair and impartial hearing of its case, in addition to the denial of a secure legal environment. The process by which governmental authorities conducted themselves was *ad hoc*, non-transparent, and in numerous respects violated rules, regulations, procedures and guidelines governing land use planning. By consequence, the overall process was mostly irregular and unnecessarily time-consuming.

### ***Water Pumping Permit***

b. The DOE unilaterally expanded the terms and conditions of the *WPP*, unduly stalled tests on the quarry site, established unreasonable testing conditions, and set arbitrary and unfounded criteria for the approval of tests.

c. The DOE unreasonably and arbitrarily refused permission to the Investor to commence Phase 2 of the pumping tests.

d. DOE officials unilaterally demanded that the Investment re-commence Phase 1 test pumping, of which failing to do so could lead to the revocation of the *WPP*.

e. Following the lapse of the first *WPP*, Galactic reapplied to the DOE, but it willfully refused to carry out its duties to evaluate the new application.

### ***Aggregate Resources Act Application***

f. The City of Somerset, the Department of the Environment and the Department of Natural Resources took steps to unfairly interfere with the processing of Galactic's quarry application during the permit review process.

### ***Departmental Zoning Order***

g. The issuance, without notice, of an extraordinary Departmental Zoning Order had the effect of freezing the land use designation of the Investment's property. Local governments and the Department of the Environment then relied on the order and willfully refused to carry out their duties to process project related permits.

### ***Declaration of Regional Interest***

h. The issuance of the Declaration of Regional Interest converted the temporary effect of the DTZO into a permanent freeze by removing Galactic's right to obtain an independent review of the Departmental Zoning Order. The declaration was issued without consultation or prior notice of any kind to the Investment and the declaration affected the Investor's property only. Furthermore, no specific reasoning for the issuance of the Declaration of Regional Interest was provided, nor evidence of any good faith nexus to these policy grounds.

57. Each of the ways in which the governments treated the Investment in an unfair, arbitrary and discriminatory way constitutes a violation of NAFTA Article 1105.

### **Expropriation**

58. NAFTA Article 1110 requires the immediate payment of fair market compensation upon the taking of governmental acts that substantially deprive an Investor of its property. Governmental actions have substantially deprived Galactic of its rights to utilize its Investment. Such actions include the permanent deprivation of rights to vary its land use designation, the unfair and contrived denial of its planning applications, and the issuance of the Department's Zoning Order and Declaration of Regional Interest issued by the Head of the Department of Municipal Affairs and Housing.

59. On April 20, 2016, the government's issuance of the Declaration of Regional Interest has transformed the temporary effect of the Head of the Department's Zoning Order, which was subject to independent review by the Georgia Municipal Board, to have permanent depravatory effect. This unilateral executive action removed any independent right of appeal by the Investor from a decision to the Georgia Municipal Board, which strictly deals with planning and zoning issues.

## **G. ISSUES RAISED**

60. Has the United States taken measures inconsistent with its obligations under Section A of NAFTA, including Articles 1102, 1103, 1105 and 1110 of Chapter 11 of the NAFTA? If so, then what amount of compensation is to be paid to the Investment as a result of the United States's failure to comply with its obligations under the NAFTA?

## **H. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED**

61. The effect of the various measures has caused loss and damage to Galactic and to the

Investor's related business operations.

62. These losses include the substantial deprivation of its interest in the Quarry Site, including consequential losses arising from the interference with its establishment, acquisition, expansion, management, conduct, operation or sale of its investment. The Investor and Investment have suffered loss arising from governmental unfair and arbitrary actions as well as from the lack of the most basic procedural fairness protections to follow the rule of law. In addition, the Investment has suffered loss and damage arising from the United States' failure to comply with its NAFTA Chapter 11 obligations.

63. The measures which have resulted in this damage are related to the effect of:

- a) The Declaration of Regional Interest made by the Head of Department of Municipal Affairs and Housing on April 20, 2016, which gave permanent effect to the Head of the Department's Zoning Order made by the Head of the Department of Municipal Affairs and Housing on April 12, 2015;
- b) The arbitrary, unfair and vexatious refusal of the Georgia Department of the Environment to issue a *Water Pumping Permit* to allow the Investment to commence the second phase of pumping tests that the Department considers necessary, in complete disregard of the rule of law and due process;
- c) The arbitrary refusal of the City of Somerset and the government of Ellaville, as well as other government agencies, to proceed with review of the Investment's *Planning Act* applications, in disregard of the rule of law and due process; and

64. The Investor respectfully claims:

- a) Damages of not less than US\$365 million in compensation for the loss, harm, injury, loss of reputation and damage caused by or resulting from the United States's breach of its obligations under Part A of Chapter II of NAFTA;
- b) The reasonable loss of contribution from the lost sale of bauxite aggregates from GBQW to the members of the Hanoi corporate family, including its American subsidiaries;
- c) Costs that were needlessly thrown away in pursuit of the unfair regulatory process including legal and other costs associated to advise government agencies of the wrongfulness of their actions;
- d) The payment of the Fair Market Value as of the date of April 20, 2016 to compensate for the difference in the fair market value between the quarry lands which were capable of having their zoning changed, and the fair market value of lands frozen in their agricultural and conservation management zoning;
- e) Professional legal and arbitration costs associated with the gross misconduct of the government which resulted in the seeking of a remedy under Chapter 11 of NAFTA and also before the courts of Georgia;
- f) The costs of this arbitration including arbitration fees, filing fees, disbursements, and associated fees;
- g) Such further relief as counsel may advise and the Tribunal may deem appropriate.

Respectfully submitted,

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Counsel for Aluminios de Choluca, S.A.