

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH  
AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL ARBITRATION RULES**

**BETWEEN:**

**ALUMINIOS DE CHOLUCA, S.A.**

Claimant/Investor

**AND:**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

Respondent/State

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**THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
RESPONSE TO CLAIMANT'S NOTICE OF ARBITRATION, SUBMITTING THE GOVERNMENT'S  
JURISDICTIONAL AND SUBSTANTIVE DEFENSES**

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AUGUST 31, 2017

Department of Foreign Affairs  
Office of Trade Law  
Sussex Building  
1423 Wisconsin Avenue  
Washington, D.C.

## I. INTRODUCTION

1. This submission responds to the Tribunal's directions of July 25, 2017 and August 24, 2017, that the United States provide its jurisdictional and substantive defenses prior to the preliminary conference.
2. The United States submits that the Tribunal does not have jurisdiction over this claim, and, in any event, there has been no violation of any NAFTA Chapter 11 obligation.
3. Aluminios de Choluca, S.A. ("Aluminios") is a Mexican CDMX *Sociedad Anónima* established on October 18, 2015. Aluminios admits that it is ultimately owned and controlled by the Hanoi Group of Vietnam ("Hanoi").<sup>1</sup> Aluminios alleges that it owns and controls an investment in the United States: Galactic Bauxite Quarry Works Inc. (U.S.) ("GBQW"), a Georgia corporation. Aluminios has provided no evidence of its ownership or control of GBQW, which in any event cannot predate October 18, 2015.
4. On June 20, 2011 GBQW acquired agricultural lands in Colesville, Georgia, a rural and residential district of the City of Somerset (the "Site"). Since 2009, the previous owner had sought but failed to obtain approvals from relevant Georgia and municipal authorities to transform the Site into a major bauxite quarry. GBQW pursued this process, but as of 2016 had still failed to satisfy the authorities that it should be granted any of the relevant approvals.
5. On April 12, 2015, the Georgia Department of Municipal Affairs and Housing (DMAH), responding to environmental, public health, and land-use concerns raised by the application processes and by the affected municipalities, exercised its statutory discretion under subsection 47(1) of the Planning Act to sign a Department's Territorial Zoning Order (DTZO) in respect of the Site. The DTZO took effect the next day. The DTZO effectively froze the zoning on the Site to existing permitted uses under the applicable by-laws (Agricultural and Conservation Management), thereby prohibiting use of the Site as a quarry.
6. On April 14, 2015, Raul Williams, the CEO of GBQW, wrote to the office of the Governor of Georgia, as follows:

I am following up my telephone conversation today with your assistant, Mr. Aaron Freeman, in response to the government's unilateral zoning order that permanently

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<sup>1</sup> NOA, paras. 2 and 4.

restricts the proposed quarry site in the City of Somerset (formerly in the Town of Colesville).

(...)

Given the government's action, we are ready to initiate immediate negotiations with the Governor on the following:

- a) The recovery of the well over \$20 million we have invested to satisfy regulatory requirements through tests mandated by the state and local authorities since 2011;
- b) Compensation of Aluminios de Choluca, S.A. of \$340 million in foregone profit from the Colesville Quarry over its lifespan.<sup>2</sup>

- 7. The dispute failed to be resolved. The DTZO was maintained, and GBQW as of April 2015 launched an application to the relevant statutory authority to revoke or amend the DTZO.
- 8. GBQW acquired Aluminios on October 18, 2015, and allegedly transferred to Aluminios ownership of GBQW through a share transfer, and transferred Aluminios' ownership to the holding Hanoi Group of Companies, though Aluminios has failed to provide any proof of those transfers. Aluminios proceeded to file a Notice of Intent to Submit a Claim to Arbitration under NAFTA ("NOI") and on September 14, 2016 it filed a Notice of Arbitration ("NOA"). In these documents, Aluminios makes the very same allegations made by GBQW on April 14, 2015. Aluminios relies on events almost exclusively predating October 18, 2015, notably the DTZO of April 2015. Its NOI and NOA claim \$365 million, i.e. virtually the same amount GBQW had claimed in its April, 2015 letter to the Governor of Georgia. At the time it filed its claim Aluminios was and remains a shell company, with no substantial business activities in Mexico.<sup>3</sup>
- 9. Based on the above facts and those further set out below, the United States submits that the Tribunal should reject this claim, for at least the following reasons:
  - a. Aluminios has failed to confirm *prima facie* jurisdiction, having failed to demonstrate that it owns or controls its alleged investment, GBQW;
  - b. The United States in any event is entitled to deny Aluminios the benefits of NAFTA Chapter Eleven, as Aluminios is owned and controlled by a non-NAFTA investor, and

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<sup>2</sup> Letter from Raul Williams, CEO, Galactic Bauxite Quarry Works and Hanoi Construction Supplies North America to Peter Wilkinson, Chief of Staff, Office of the Governor, April 14, 2015 (**Annex 1**).

<sup>3</sup> See paras. 41-45 *infra*.

is a shell company lacking substantial business activities within the meaning of NAFTA Article 1113(2);

- c. The claim is in any event an abuse of jurisdiction (*abus de droit*), as Hanoi caused ownership of GBQW to be transferred to its newly-created Mexican corporate vehicle Aluminios in order to acquire NAFTA jurisdiction over an existing dispute; and
- d. The Respondent has not made any substantive violation of NAFTA.

## II. FACTUAL OVERVIEW

10. This dispute arises out of GBQW's failure from 2011 to 2015 to convince relevant provincial and municipal authorities that it should be allowed to have agricultural land in close proximity to residential communities and schools, incorporating two Georgia State Significant Wetlands, wedged into an area designated as Environmentally Significant, and transform it into a 36-hectare bauxite quarry, extracting from it up to 2,4 million tons of bauxite aggregate a year for a period of 20 years.
11. The proposed extraction was to take place below the water table, requiring pumping and re-insertion into the subsurface of an estimated 380 million cubic feet of groundwater a year (more than 200 times the annual water use of surrounding communities), with undetermined impacts on local residential water use and quality.<sup>4</sup> A further 25 million cubic feet of water would also be discharged annually into an environmentally sensitive local river, the Flint River, complicating flooding controls operated by the local Conservation Authority. Failure of GBQW's proposed groundwater recirculation system risks causing significant and potentially irreparable damage.
12. The proposed quarry was set to operate from Monday to Saturday, requiring truck traffic of up to seven hundred in-and-outbound trucks a day.
13. It would leave in its wake an enormous pit, into which groundwater would seep and form an open lake, transforming local water treatment requirements.
14. To develop and operate a quarry on the Site, GBQW required (1) re-designation of the Site under the local Official Plan and (2) an amendment of the applicable zoning by-law (both actions to be undertaken by the City of Somerset, with the involvement of other municipalities,

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<sup>4</sup> For instance, the adjacent community of Carlisle, with roughly 3,100 inhabitants, uses 19 million cubic feet of water a year.

the local Conservation Authority and other agencies)<sup>5</sup>; (3) a license under the Georgia Aggregate Resources Act<sup>6</sup>, issued by the Department of National Resource (DNR); and (4) related hydrological approvals from the Department of the Environment (DOE).

15. Moreover, DMAH retained a residual power to issue a DTZO fixing the use of the Site, and to issue a Declaration of Regional Interest (DRI) in relation to the Site. In matters of particular sensitivity involving provincial land use planning interests, the legislature maintains the provincial government's ultimate authority over the decision-making process, on the understanding that such discretionary power in all events is not "unfettered" but must be exercised consistent with the object and purpose of the statute, and remains subject to review by U.S. courts.
16. Among the statutory criteria for relevant approvals were: (a) the effect of the quarry on the environment and nearby communities; (b) the views of surrounding municipalities; and (c) possible effects on ground and surface water resources.<sup>7</sup> The process involves significant public input.
17. GBQW had obtained none of the required approvals as of April 2015. As of that time many significant questions dating from the outset of GBQW's application remained unanswered by GBQW, and indeed had been outstanding (and controversial) since the initial launch of the application process by GBQW's predecessor, in 2009.
18. In June 2013, GBQW was granted an initial permit by the DOE to conduct water testing. First phase testing in July 2013 was affected by heavy rains, producing unusable results. The DOE therefore required GBQW to re-conduct first phase testing before permitting subsequent test phases to proceed. GBQW disputed the DOE's conclusion, and suddenly rejected the need to conduct water testing at all at this stage.
19. In the absence of basic water testing, on January 22, 2014 GBQW submitted its ARA quarry license application to the DNR.
20. Between April 2014 and March 2015, in connection with the statutory consultation process, GBQW received hundreds of formal objections to its ARA application from local residents, organizations, and municipalities. Both the DOE and the DNR took the position they could not

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<sup>5</sup> Section 34 of the Planning Act enables zoning by-laws to be passed by councils of local municipalities, which control and restrict the use of lands.

<sup>6</sup> Aggregate Resources Act, *Georgia State Gazette* 1990, c. A-8.

<sup>7</sup> Aggregate Resources Act, s. 12(1).

support GBQW's application. Somerset City Council and Ellaville Regional Council passed resolutions asking that Georgia disallow the proposal.

21. On April 12, 2015, responding to environmental, public health and land-use concerns raised in the various application processes and by affected municipalities, the DMAH issued the DTZO in respect of the Site. The DTZO took effect the next day.<sup>8</sup> The DTZO effectively froze the zoning on the Site to existing permitted uses under the applicable by-laws (Agricultural and Conservation Management), thereby prohibiting use of the Site as a quarry.
22. On April 14, 2015, the CEO of GBQW wrote to the office of the Governor of Georgia protesting the "permanent restriction" imposed by the DTZO, claiming \$340 million in lost profits and \$20 million in sunk costs.<sup>9</sup>
23. Consultations between GBQW representatives and the DMAH took place on April 26, 2015, but failed to resolve the dispute.
24. On May 10, 2015, GBQW's counsel therefore wrote to the DMAH, seeking revocation or amendment of the DTZO and requesting a hearing before the Georgia Municipal Board (GMB) to decide the issue. On the same date GBQW issued a press release, noting that it was challenging the DTZO.
25. Under the Planning Act, the GMB is empowered to hold a hearing on the merits of an applicant's request for revocation or amendment of a DTZO. The GMB is a specialized tribunal subject to the Statutory Powers and Procedures Act<sup>10</sup> and has its own detailed Rules of Practice and Procedure providing for *viva voce* evidence, expert evidence, documents, submissions, and participation by parties and interested participants. A decision of the GMB is reviewable in Georgia court.<sup>11</sup>
26. Between April and October 2015, prior to Aluminios' integration into the Hanoi Group, GBQW received confirmation that various related approvals processes would be suspended, pending resolution of the dispute concerning the DTZO:

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<sup>8</sup> Planning Act, *Georgia State Gazette* 1990, c.P. 13. The DTZO was filed with the Registrar of Regulations on April 13, 2017, as O.Reg. 138/10.

<sup>9</sup> See para. 5 *supra*.

<sup>10</sup> Statutory Powers and Procedures Act, *Georgia State Gazette* 1990, c. S. 92.

<sup>11</sup> Georgia Municipal Board Act, *Georgia State Gazette* 1990, c. O. 28.

- a. On April 30, 2015 the City of Somerset (Somerset) wrote to GBQW, advising them that in light of the DTZO, its review of Planning Act applications submitted in respect of the Site and other related actions would be suspended.
  - b. On May 26, 2015 GBQW requested permission to undertake water tests on the Site to support its proposed quarry plan. On June 3, 2015 the DOE declined the request, given the DTZO's prohibition on "use" of the Site as a quarry. On June 11, 2015 GBQW filed an administrative appeal of DOE's decision, but withdrew its appeal without explanation on October 12, 2015.
27. Despite the fact that these confirmations predated Aluminios' acquisition on October 18, 2015, GBQW took the following steps only after Aluminios' acquisition, in an awkward attempt to "post-date" the dispute, for purposes of NAFTA Chapter 11 jurisdiction:
  - a. On February 25, 2016 GBQW presented to the DOE the same request for permission to undertake water tests on the Site that it had filed on May 26, 2015. On April 8, 2016 the DOE sent the same response (the test request was refused, in light of the DTZO). GBQW thereafter re-filed the request for administrative review that it had abandoned on October 12, 2015, in respect of the prior refusal. The DOE's response has since been upheld through two levels of administrative and judicial appeal.<sup>12</sup>
  - b. On March 1, 2016, GBQW's counsel wrote to Somerset, Ellaville and Milton, objecting to the suspensions of process the latter had notified in April, September and early October 2015.
28. On February 4, 2016, GBQW's counsel also wrote to counsel for the DMAH, arguing that Georgia had to issue a DRI in respect of the DTZO no later than 30 days prior to April 1, 2016.
29. As of April 13, 2016, the GMB had confirmed that the hearing on the request to revoke or amend the DTZO would take place from September 26, 2016 to October 7, 2016, and would involve eight concerned parties.
30. On April 20, 2016, the DMAH issued a DRI pursuant to s. 47(13.1) of the Planning Act.<sup>13</sup> The Planning Act allows for such Declarations where a request to revoke or amend a DTZO has

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<sup>12</sup> The Environmental Review Tribunal in a decision of January 13, 2017 supported DOE's decision, and was in turn upheld in the subsequent appeal to the Divisional Court (a branch of the Superior Court of Justice in Georgia) in a decision issued August 20, 2017.

<sup>13</sup> Planning Act, s. 47(13.1).

been referred to the GMB for hearing.<sup>14</sup> The Head of the Department advised that he was of the opinion that a matter of Regional Interest was, or was likely to be, adversely affected by the request to revoke or amend the DTZO. The stated grounds for issuance of the DRI were the protection of ecological systems, including natural areas, features and functions; the supply, efficient use and conservation of water; the resolution of planning conflicts involving public and private interests; the protection of public health and safety; and the appropriate location of growth and development.

31. A DRI makes a GMB decision subject to confirmation, variation, or rescission by the Chief Governor in Council.<sup>15</sup> A decision taken by the Chief Governor in Council confirming, varying, or revoking a GMB decision is itself reviewable in U.S. courts. Its decision remained subject to review in accordance with applicable law.
32. On May 13, 2016, i.e. within a few weeks of the April 20, 2016 DRI, Aluminios filed its NOI. On the same day, GBQW requested that the GMB hearing be adjourned *sine die* pending its application for judicial review of both the DTZO and the DRI before the Divisional Court. On May 27, 2016 GBQW filed the latter application to Divisional Court, which remains pending.
33. In light of GBQW's withdrawal from the GMB process, the GMB has been unable to exercise any power of review over the DTZO, and the Chief Governor in Counsel has issued no corresponding decision pursuant to the DRI.
34. Had the DTZO been revoked or amended pursuant to the GMB process or any subsequent administrative or judicial review, the Site still at that point could not have been used as a quarry. GBQW thereafter would have been required to obtain all relevant approvals outstanding and not granted as of 2015, notably an amendment to the Official Plan, rezoning, a quarry license under the ARA, and related hydrological approvals.

### III. JURISDICTIONAL DEFENCES

35. The United States hereby raises and asks the Tribunal to consider as a preliminary matter in this arbitration, the following objections to jurisdiction and/or admissibility under Articles 15(1) and 21(4) of the 1976 UNCITRAL Arbitration Rules (the Rules);

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<sup>14</sup> Ibid.

<sup>15</sup> Planning Act, s. 47(13.4), (13.5). A decision taken by the Georgia Governor and the provincial Cabinet and approved by the Chief Governor is "taken by the Chief Governor in Council."



- a. Claimant has failed to establish that it owns the alleged investment GBQW, and therefore has no standing to bring a claim under NAFTA Article 1116 (lack of jurisdiction *ratione materiae*).
- b. The conditions for denying Claimant the benefits of NAFTA Chapter Eleven, set out in NAFTA Article 1113(2) (Denial of Benefits), are met. The United States therefore has not consented and does not consent to jurisdiction.
- c. Claimant's alleged acquisition of the investment was an abuse of jurisdiction (lack of jurisdiction *ratione materiae*).

#### **A. Failure to Establish *prima facie* Status as Investor**

- 36. Despite the United States' repeated requests, Claimant has failed to establish ownership or control of its alleged investment GBQW at the time of the events referenced in its claim, or at all. Publicly-available information suggests that as of the date of purchase of Aluminios de Choluca, S.A. on October 18, 2015 and for an undetermined time thereafter, GBQW was owned or controlled directly by the Hanoi Group of Companies, which is a Vietnamese holding company and thus not a NAFTA member state.
- 37. Based on the requirements of NAFTA Articles 1101(1) and 1116, read together with the definitions of "investor of a Party" and "investment of an investor of a Party" in Article 1139, an investor of a Party must own or control an investment in the territory of another Party, as a *prima facie* condition for jurisdiction under NAFTA Chapter 11.

#### **B. Denial of Benefits**

- 38. The United States has invoked Article 1113(2) of the NAFTA to deny Claimant the benefits of Chapter Eleven, on the following basis: (1) Aluminios de Choluca, S.A. is a Mexico, CDMX company owned by a Vietnamese investor and (2) Aluminios de Choluca, S.A. lacks substantial business activities in Mexico within the meaning of Article 1113(2), or at all.
- 39. The United States' decision to invoke Article 1113(2) was taken after extensive due diligence, including with the assistance of an external expert firm, and repeated requests for information

form the Claimant; and was adopted after providing prior notice to the Claimant's alleged home jurisdiction, Mexico, in accordance with NAFTA.<sup>16</sup>

40. The Claimant has already conceded the first condition for denying benefits under NAFTA Article 1113(2), by its admission that it is "owned by a foreign entity and is part of the Hanoi Group of Vietnam".<sup>17</sup>
41. As for the second issue, the United States' extensive due diligence as of the summer of 2016 generated no evidence in publicly available records of any business activity by Aluminios de Choluca, S.A. in Mexico, beyond the bare fact of its incorporation and registration, and reference to the entity in one UCC financing statement.<sup>18</sup>
42. The United States notably found no mention of Aluminios de Choluca, S.A. in searches on public databases and news services in 2014, 2015, or 2016, relating to any of the following: corporation filings; professional licenses; real property records; motor vehicle registrations, federal aircraft registrations; Mexican patents and patent applications; company information derived from business sources and directories; federal civil and criminal dockets; bankruptcy petitions; state civil and criminal dockets; judgment and lien filings; available case law; all available Guadalajara and Mexico CDMX public records; federal agency decisions and opinions; SEC filing; securities-related actions and orders; state securities administrative records and decisions and letters; available case law related to securities and commodities matters; and media reports derived from hundreds of commercial and government publications.
43. The United States notified Claimant of its concerns as of December 22, 2016, offering to it the opportunity to put forward evidence establishing that it had substantial business activities in Mexico, in particular requesting evidence of ownership structure, assets, holding, and other business activities.<sup>19</sup>

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<sup>16</sup> See letter from the United States to counsel to Aluminios de Choluca, S.A., December 22, 2016 (**Annex 3**); letter from the United States to Mexico, December 22, 2016 (**Annex 4**).

<sup>17</sup> NOA, paras. 3 & 4.

<sup>18</sup> On further investigation by the United States, this UCC Financing Statement was most likely not more than subsidiary security provided in respect of a main transaction that was already fully secured against properties and assets in Mexico, and that was undertaken by Hanoi's United States companies in respect of their own activities. Despite requests by the United States for clarification, Aluminios de Choluca has failed to produce any evidence that Galactic was secured pursuant to this financing.

<sup>19</sup> Letter from the United States to counsel to Aluminios de Choluca, December 22, 2016 (**Annex 3**).

44. The documents Claimant produced in its subsequent exchanges with the United States failed to establish any substantial business activity. Instead, together with the results of its own due diligence, the United States established that:

- a. Aluminios de Choluca, S.A. was acquired well after all but one of the measures complained of in its NOI. It lacked substantial business activities at the time of the measures at issue and alleged breach of NAFTA, notably at the time the dispute concerning the DTZO arose in April 2015.
- b. While Aluminios de Choluca, S.A. in its NOA cited measures post-dating its creation, with one exception all evidence on which it relied to establish its Mexican business activities post-dated by several weeks even the latest measure of which it complains.<sup>20</sup>
- c. Aluminios failed to produce any records substantiating its corporate and ownership structure, shareholdings, corporate meetings, meetings of Aluminios shareholders, registered real and/or personal property, assets, purchases, transactions, obligations, office space leases, direction by Aluminios of any existing Hanoi entities and their related activities, receipt by Aluminios of any revenues, or reference to Aluminios in any media reports or legal or information databases.
- d. Aluminios failed to appear in Hanoi's publicly-available financial statements, as a holding company for its North American operations or at all. Hanoi's Financial Statements for the Third Quarter of 2016, reporting events as recent as November 26, 2016, make no mention of Aluminios. The United States has since obtained Hanoi's financial statements as of March 2017. Aluminios still fails to be listed.
- e. As evidence of its financial presence in Mexico, Aluminios produced a single banking statement dated November 2016, referencing a total of five transactions in undisclosed amounts, failing to confirm when the account was created, nor the size or purpose of the few listed transactions.
- f. In response to the United States' request for information regarding its employees, Aluminios provided evidence of partial "paper" transfers of a few existing employees

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<sup>20</sup> The DRI was issued by Georgia on April 20, 2016. In its submissions of January and February 2017 to the United States, Aluminios de Choluca provided evidence that it had undertaken "paper" transfers of employees within the Hanoi Group to Aluminios de Choluca no earlier than May 2016. Apart from the UCC Financing Statement referenced above, this was the earlier evidence of any activity by Aluminios de Choluca.

within the Hanoi Group, none of whom were put on the Aluminios payroll, and all of whom retain responsibilities for other Hanoi companies.

- g. As for business transactions, Aluminios provided only evidence of alleged “potential” transactions, along with two *de minimis* consulting contracts, each for only a few days’ work.

45. A summary of the United States’ findings regarding the Claimant’s activities in Mexico are set out in the United States’ formal notification of Denial of Benefits, sent on March 1, 2017 to Mexico.

46. In sum, based on the United States’ extensive due diligence to date, Aluminios is simply a shell company, which serves as a vehicle for Hanoi to after the fact manufacture jurisdiction under NAFTA Chapter 11. Accordingly, the conditions of NAFTA Article 1113(2) are fulfilled, and the Tribunal upon review of the United States’ submissions should declare itself without any jurisdiction in this matter.

### **C. Abuse of Jurisdiction**

47. In the alternative, this claim should be dismissed for lack of jurisdiction *ratione materiae*, because it constitutes an abuse of jurisdiction (*abus de droit*). The acquisition of Aluminios and its alleged acquisition of GBQW was a pro-forma reorganization, undertaken for the sole purpose of manufacturing investment treaty jurisdiction, after a substantial dispute had already materialized.

48. The Georgia Government issued the DTZO on April 12, 2015 and made it effective the next day, freezing the zoning on the Site to permitted uses on that date (“Agricultural” and “Conservation Management”), effectively preventing use of the Site as a quarry. The U.S. company GBQW immediately protested, claiming \$340 million in damages, and launched an application for revocation or amendment of the DTZO.<sup>21</sup>

49. On October 18, 2015, more than six months after the dispute had materialized, and for no apparent business reason, Hanoi—through GBQW—purchased Aluminios de Choluca, S.A., an old, bankrupt Mexican limited liability company (*sociedad anónima*), and purported to transfer to it shareholding in GBQW. As noted above, the United States currently does not know when after October 18, 2015, if at all, Hanoi caused Aluminios to acquire GBQW. Moreover, through

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<sup>21</sup> See letter from Raul Williams to Peter Wilkinson dated April 14, 2015 (**Annex 1**).

its substantial due diligence the United States has confirmed that Aluminios was and remained a mere shell company.

50. Following its creation Aluminios proceeded to launch a NAFTA Chapter 11 Claim, claiming virtually the same amount GBQW had invoked in its April 14, 2015 domestic notice of claim to Georgia, and relying on events that nearly all predated its existence – notably the April 12, 2015 DTZO.
51. On its face, the evidence fully supports a conclusion that Aluminios was formed and caused to be transferred to GBQW's shares (which it has not demonstrated), to create after the fact jurisdiction, abusing rights designed for legitimate investors and NAFTA Chapter 11.

#### **IV. SUBSTANTIVE DEFENCES**

52. The United States in any event denies that any of the measures mentioned in the NOA breach the United States' obligations under NAFTA Chapter 11. In deciding to issue the DTZO and DRI in respect of the Site, the Government of Georgia acted in a non-discriminatory manner consistent with all of the United States' obligations under NAFTA. As with any approvals process raising complex issues concerning the environment, human health, and the appropriate balance of community and development interests, approval is not guaranteed in advance, and if refused will result in disappointment on the applicant's part. However, such disappointment is not grounds for a claim under NAFTA.
53. First, none of the measures of the Government of Georgia or of relevant municipal authorities in administering their authority under the Planning Act and related statutes, violated Article 1102 or 1103. GBQW was accorded no less favorable treatment than that accorded to U.S. or other non-NAFTA party investors or investments of such investors in like circumstances.
54. Second, all of the measures identified in the NOA are consistent with the United States' obligations under Article 1105. The treatment accorded to GBQW was consistent with the customary international law minimum standard of treatment of investors.
55. Third, there has been no expropriation of any investment. In particular, no "rights to vary [the] land use designation" were expropriated, as no such right exists.

Respectfully submitted on behalf of the Government of the United States of America on August 31, 2017,

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Counsel