

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Commerce Group Corp. and San Sebastian Gold Mines, Inc.**

**v.**

**Republic of El Salvador  
(ICSID Case No. ARB/09/17)**

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**MINUTES OF THE FIRST SESSION OF THE TRIBUNAL**

**July 27, 2010**

## CONTENTS

	<b>Page No.</b>
1. Constitution of the Tribunal and Tribunal Members' Declarations (ICSID Arbitration Rule 6 and CAFTA 10. 19).....	3
2. Representation of the parties (Arbitration Rule 18).....	4
3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28). ....	4
4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees). ....	4
5. Applicable Arbitration Rules (ICSID Convention Article 44 and CAFTA Article 10.16.5). ....	4
6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); CAFTA Article 10.20.1)). ....	5
7. Procedural Language (Arbitration Rules 20(1)(b) and 22). ....	5
8. Records of Hearings (Arbitration Rule 20(1)(g)). ....	5
9. Means of Communication (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).....	6
10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)). ....	7
11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16).....	7
12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)). ....	7
13. The Written and Oral Procedure (Arbitration Rules 20(1)(c) and 29).....	8
14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31). ....	9
15. Pre-Hearing Conference (Arbitration Rule 21).....	9
16. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36). ....	10
17. Dates of Subsequent Sessions (Arbitration Rule 13(2)). ....	10
18. Publication of the Award (Arbitration Rule 48(4) and CAFTA Article 10.21).....	10
19. Non-disputing parties and <i>amicus curiae</i> (Arbitration Rule 37 (2) and CAFTA Articles 10.20.2 and 10.20.3)). ....	10
20. Hearings open to the public (CAFTA Article 10.21.2). ....	10

The Arbitral Tribunal held its first session on July 27, 2010 from 10:00 a.m. to 12:00 noon by teleconference.

Present at the first session were:

Members of the Tribunal

Professor Albert Jan van den Berg, President  
Dr. Horacio A. Grigera Naón, Arbitrator  
Mr. J. Christopher Thomas, Q.C., Arbitrator

ICSID Secretariat

Mr. Marco T. Montañés-Rumayor, Secretary of the Tribunal

Participating on behalf of the Claimants

Mr. John E. Machulak, Machulak, Robertson & Sodos, S.C.  
Mr. Eugene Bykhovsky, Machulak, Robertson & Sodos, S.C.  
Prof. Andrew Newcombe, Faculty of Law, University of Victoria

Participating on behalf of the Respondent

Mr. Luis Parada, Dewey & LeBoeuf LLP  
Mr. Derek Smith, Dewey & LeBoeuf LLP  
Mr. Tomás Solís, Dewey & LeBoeuf LLP  
Ms. Erin Argueta, Dewey & LeBoeuf LLP

On behalf of the Tribunal, the Secretary circulated a Provisional Agenda (attached hereto as Annex A) on July 19, 2010 and invited the parties to submit a Joint Statement advising the Tribunal of their agreement on the items of the agenda and of their respective positions where they were unable to reach an agreement. The parties submitted such statement (attached hereto as Annex B) on July 23, 2010. The parties further submitted two separate Procedural Calendars attached hereto as Annex C) on July 26, 2010. The Provisional Agenda, together with the Joint Statement and the separate Procedural Calendars formed the basis for discussions at the first session.

Opening of the Session

After opening the session, the President of the Tribunal welcomed the participants and asked the parties to introduce their respective representatives. The President then proposed to go over the items included in the Agenda.

**1. Constitution of the Tribunal and Tribunal Members' Declarations (ICSID Arbitration Rule 6 and CAFTA 10. 19).**

- 1.1. The parties confirmed that the Tribunal was constituted on July 1, 2010. Claimants agreed that the Tribunal was constituted in accordance with the ICSID Convention and the ICSID Arbitration Rules, as well as with the CAFTA. Respondent only agreed that the Tribunal was constituted under the rules and procedures set forth in CAFTA to decide CAFTA claims. Respondent

accordingly reserved the right to contest that the Tribunal has been properly constituted under the ICSID Arbitration Rules and to decide non-CAFTA claims.

1.2. It was noted that the three arbitrators timely and duly submitted their signed declarations, in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary of the Tribunal prior to the session (i.e., on July 1, 2010).

**2. Representation of the parties (Arbitration Rule 18).**

- 2.1. The parties confirmed their agreement as stated in item 2 of their Joint Statement.
- 2.2. In addition, the parties confirmed that their main point of contact should be as follows:
- (a) For the Claimants: John E. Machulak, Machulak, Robertson & Sodos, S.C.
  - (b) For the Respondent: Mr. Luis Parada, Dewey & LeBoeuf LLP.

**3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28).**

3.1. The parties confirmed their agreement as stated in paragraph 3 of their Joint Statement.

**4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees).**

- 4.1. The parties agreed that, in addition to receiving reimbursement for any direct expenses reasonably incurred, each member of the Tribunal would receive:
- (a) a fee of USD3,000 (three thousand US dollars), or such other fee as may be set from time to time in the Centre's Schedule of Fees, for each day of travel or meeting, or each eight hours of other work performed in connection with the proceeding or pro rata; and
  - (b) subsistence allowances and reimbursement for travel (in business class) and other expenses within the limits set in Administrative and Financial Regulation 14.

**5. Applicable Arbitration Rules (ICSID Convention Article 44 and CAFTA Article 10.16.5).**

5.1. The parties confirmed that, in accordance with Article 44 of the ICSID Convention and CAFTA Article 10.16.5, the ICSID Arbitration Rules of 2006 will govern the arbitration, except to the extent modified by CAFTA.

**6. Place of Proceeding (ICSID Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); CAFTA Article 10.20.1)).**

- 6.1. The parties agreed that the place of arbitration will be the seat of the Centre in Washington, D.C.
- 6.2. The parties also agreed that the Tribunal may hold sessions at any other place with their agreement.
- 6.3. Finally, the parties confirmed that the Tribunal may deliberate by meeting (without the parties) at any other location it deems convenient and by using any means of communication it considers appropriate.

**7. Procedural Language (Arbitration Rules 20(1)(b) and 22).**

- 7.1. The parties agreed that the procedural languages will be English and Spanish.
- 7.2. The parties confirmed that they intend to submit their pleadings in English. Exhibits may be submitted in either language, with an English translation of any relevant portion not in English.
- 7.3. Oral testimony and arguments before the Tribunal will be in English or Spanish, with simultaneous interpretation arranged by the Secretariat.
- 7.4. Any decision and the Award will be in English in Spanish.
  - (a) For purposes of meeting time limits under CAFTA, any decision and the Award may be issued in English first, followed, as soon as practicable, by the Spanish version.
  - (b) The Secretariat will arrange translation services.
- 7.5. Procedural orders issued by the Tribunal in English need not be translated into Spanish.
- 7.6. Communications from the Secretariat to the parties will be in English.

**8. Records of Hearings (Arbitration Rule 20(1)(g)).**

- 8.1. The parties agreed that the Secretariat will arrange for sound recordings of all sessions, conferences and hearings (in English, Spanish and Floor).
- 8.2. The Secretariat will also arrange for simultaneous stenographic services in *real time* (in English and Spanish) of the hearings. The parties would then have time to review the draft transcripts and propose corrections.

**9. Means of Communication (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).**

- 9.1. The parties agreed to the electronic filing of all written submissions and communications.
- 9.2. Routine administrative or procedural correspondence should be emailed to the Secretary of the Tribunal at mmontanes@worldbank.org, with a copy to counsel for the other party.
- 9.3. The main pleadings, excluding documentary evidence, should be emailed to the Secretary of the Tribunal at mmontanes@worldbank.org on the stipulated filing date, with a copy to counsel for the other party.
- 9.4. The main pleadings, including supporting documentary evidence, should be:
- (a) uploaded to a secure FTP portal on or before the due date (see email of August 11, 2010 from ICSID with access instructions to the portal);
  - (b) dispatched in digital media format to the Secretary of the Tribunal (see Annex C for ICSID mailing instructions) by sending four (4) DVDs, CD-ROMs or USB flash- drives no later than the first business day following the applicable deadline; and
  - (c) dispatched in digital media format to opposing counsel by sending (1) additional DVD, CD-ROM or USB flash-drive of the complete submission no later than the first business day following the applicable deadline.
  - (d) To be considered timely, a written submission should meet the above requirements.
- 9.5. The digital media submissions should be sent to:

Claimants:

c/o Mr. John E. Machulak  
Machulak, Robertson & Sodos, S.C  
1733 North Farwell Avenue  
Milwaukee, WI 53202

Respondent:

c/o Mr. Luis Parada  
Mr. Derek Smith  
Dewey & LeBoeuf LLP  
1101 New York Avenue NW  
Suite 1100  
Washington, D.C. 20005

9.6. The electronic submissions should be sent to:

Claimants:

Mr. John E. Machulak -  
machulak@lawmessage.com  
Mr. Eugene Bykhovsky -  
eugene@lawmessage.com  
Prof. Andrew Newcombe -  
newcombe@uvic.ca

Respondent:

Mr. Derek Smith - dsmith@dl.com  
Mr. Luis Parada - lparada@dl.com  
Mr. Tomás Solís - tsolis@dl.com  
Ms. Erin Argueta -  
eargueta@dl.com

9.7. All supporting documents, i.e. witness statements and expert reports, legal authorities and other exhibits should be in PDF searchable format.

(a) Each party should number the supporting documentation consecutively throughout the whole proceedings. To this effect, the Claimants shall use C-1, C-2,... (for exhibits) and CL-1, CL-2.... (for legal authorities). Respondent shall use R-1, R-2 (for exhibits) and RL-1, RL-2 (for legal authorities), respectively.

(b) In addition, the parties should include an index of the exhibits and legal authorities used.

**10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)).**

10.1. It was agreed that the presence of a majority of the members of the Tribunal shall be required for its sittings. The Tribunal members stated, nonetheless, their intention to be present in each of the Tribunal's sitting,

**11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16).**

11.1. The parties confirmed that, in accordance with Arbitration Rule 16(1), decisions of the Tribunal could be made by a majority of the members of the Tribunal.

11.2. In accordance with Arbitration Rule 16(2), the Tribunal may make decisions by correspondence, or by any other appropriate means of communication, provided that all members are consulted. Decisions so taken shall be certified by the President of the Tribunal.

**12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)).**

12.1. The parties confirmed that the President of the Tribunal will have the power to fix and extend time limits for the completion of the various steps in the proceeding.

**13. The Written and Oral Procedure (Arbitration Rules 20(1)(c) and 29)).**

- 13.1. Respondent confirmed that it intends to file Preliminary Objections under the expedited procedure of CAFTA Article 10.20.5 by August 16, 2010.
- (a) The parties confirmed that the scheduling at this point of the proceeding should be limited to the Preliminary Objections phase.
- (b) The parties also reserved the right to request a hearing after having read the Preliminary Objections and the Response.
- 13.2. The parties were unable however, to agree on a procedural calendar. The President of the Tribunal then invited the parties to comment on the proposed Separate Procedural Calendars (see Annex C).
- 13.3. Having considered the parties' submissions, and pursuant to the "expedited" nature of the Preliminary Objections under CAFTA Article 10.20.5, the Tribunal decided that (i) there would be one round of pleadings, and (ii) the following procedural calendar would apply:

<b>Date</b>	<b>Party/Tribunal</b>	<b>Description</b>
August 16, 2010	Respondent	Preliminary Objections under CAFTA Article 10.20.5.
September 15, 2010	Claimants	Response to the Preliminary Objections under CAFTA Article 10.20.5.
September 30, 2010	Non-disputing parties and <i>amicus curiae</i>	Submissions under CAFTA Articles 10.20.2 and 10.20.3
November 12, 2010		Hearing on Preliminary Objections under CAFTA Article 10.20.5 in Washington, D.C.

- 13.4. After the first session, on August 13, 2010, the parties sent a joint letter to the Tribunal (see Annex D) proposing two rounds of pleadings and the calendar below (the penultimate entry having been added by the Tribunal), which the Tribunal hereby confirms:



Date	Party/Tribunal	Description
August 16, 2010	Respondent	Preliminary Objections under CAFTA Article 10.20.5.
September 15, 2010	Claimants	Response to the Preliminary Objections under CAFTA Article 10.20.5.
September 30, 2010	Respondent	Reply on Preliminary Objections under CAFTA Article 10.20.5.
October 15, 2010	Claimants	Rejoinder on Preliminary Objections under CAFTA Article 10.20.5.
November 1, 2010	Non-disputing parties and <i>amicus curiae</i>	Submissions under CAFTA Articles 10.20.2 and 10.20.3
November 15, 2010		Hearing in Washington, D.C. (if needed)

13.5. In addition, the Tribunal notes that in the parties' joint letter of August 13, 2010, the parties noted that they had discussed the possibility of filing additional preliminary objections after the decision on the preliminary objections filed on August 16. The parties further noted that they did not agree on how the rules should be interpreted. Accordingly, Respondent reserved any right it has to file additional preliminary objections, and Claimants reserved any objection they may have to such a filing, including objections as to timeliness.

**14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31).**

14.1. The parties are trying to reach an agreement on time limits and dates.

14.2. The parties agreed to the electronic filing of all submissions and correspondence. Supporting documentation should accompany the pleading to which it relates. See *supra* item 9.

**15. Pre-Hearing Conference (Arbitration Rule 21).**

15.1. The parties confirmed their agreement as stated in paragraph 15 of their Joint Statement.

**16. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36).**

N/A

**17. Dates of Subsequent Sessions (Arbitration Rule 13(2)).**

N/A

**18. Publication of the Award (Arbitration Rule 48(4) and CAFTA Article 10.21).**

18.1. The parties agreed that the Award or any decision or order may be published by ICSID.

18.2. By email of July 27, 2010, Respondent confirmed that pursuant to CAFTA Article 10.21.1, the documents for this arbitration are available to the public at:  
[http://www.minec.gob.sv/index.php?option=com\\_phocadownload&view=category&id=30:commerce-group-vrs-repblica-de-el-salvador&Itemid=63](http://www.minec.gob.sv/index.php?option=com_phocadownload&view=category&id=30:commerce-group-vrs-repblica-de-el-salvador&Itemid=63)

**19. Non-disputing parties and *amicus curiae* (Arbitration Rule 37 (2) and CAFTA Articles 10.20.2 and 10.20.3)).**

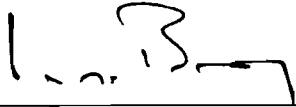
19.1. The parties have not reached an agreement on the time limits for the filing of non-disputing party or *amicus curiae* submissions. See *supra* Item 13.4

**20. Hearings open to the public (CAFTA Article 10.21.2).**

20.1. The parties agreed in principle (subject to the review of the respective costs) to webcast any hearing pursuant to CAFTA Article 10.21.2.

Other Matters

Each party confirmed that there was no other matter that they wished to address before the Tribunal. Thus, the President of the Tribunal thanked all of the participants and declared the first session closed.



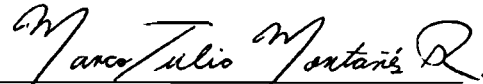
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Professor Albert Jan van den Berg  
President of the Tribunal

3 September 2010

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Date



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Mr. Marco Tulio Montañés-Rumayor  
Secretary of the Tribunal

September 3, 2010

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Date

**Annex A**  
**The Provisional Agenda**

I. Procedural Matters

1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6).
2. Representation of the Parties (Arbitration Rule 18).
3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28).
4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees).
5. Applicable Arbitration Rules (Convention Article 44).
6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)).
7. Procedural Language (Arbitration Rules 20(1)(b) and 22).
8. Records of Hearings (Arbitration Rule 20(1)(g)).
9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).
10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)).
11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2)).
12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)).
13. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29).
14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31).
15. Pre-Hearing Conference (Arbitration Rule 21).
16. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36).
17. Dates of Subsequent Sessions (Arbitration Rule 13(2)).
18. Publication of the Award (Arbitration Rule 48(4) and CAFTA Article 10.21).

19. Non-disputing parties and *amicus curiae* (CAFTA Article 10.20).

20. Hearings open to the public (CAFTA Article 10.21.2 2).

II. Other matters

**Annex B**  
**The Joint Statement of the Parties**

DRAFT PROVISIONAL AGENDA

First Session of the Arbitral Tribunal

I. Procedural Matters

1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6).
2. Representation of the Parties (Arbitration Rule 18).

Claimant

Machulak, Robertson & Sodos, S.C. (John E. Machulak and Eugene Bykhovsky) (main point of contact: John E. Machulak, Machulak@lawmessage.com)  
Professor Andrew Newcombe, c/o Faculty of Law, University of Victoria, PO Box 2400, Victoria, BC, Canada V8W 3H7, Email: newcombe@uvic.ca Tel: 250-721-8161

Respondent

Attorney General of the Republic of El Salvador (Romeo Benjamín Barahona)  
Dewey & LeBoeuf LLP (Derek Smith, Luis Parada, Tomás Solís, and Erin Argueta) (main point of contact: Luis Parada, LParada@dl.com)

3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28).

The parties reserve their rights.

4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees).

The parties understand the ICSID schedule of fees applies.

5. Applicable Arbitration Rules (Convention Article 44).

In accordance with Article 44 of the ICSID Convention and CAFTA Article 10.16.5, the ICSID Arbitration Rules of 2006 will govern the arbitration, except to the extent modified by CAFTA.

6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)).

Washington, D.C.

7. Procedural Language (Arbitration Rules 20(1)(b) and 22).

English and Spanish. The parties intend to submit their pleadings in English. Exhibits may be submitted in either language, with an English translation of any relevant portion not in English. Either language may be used at any hearing, with simultaneous interpretation.

Any decision and the Award will be in English and Spanish. The English version of the decision or award may be issued in English first, followed as soon as practicable by the Spanish version, for purposes of meeting time limits in CAFTA.

8. Records of Hearings (Arbitration Rule 20(1)(g)).

Court recorders to prepare transcripts in English and Spanish. The parties would have time to review the draft transcripts and propose corrections. The original language spoken at the hearing will prevail in the event of inconsistencies between the English and Spanish audio versions.

9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).

Communications by electronic mail to:

Claimant

John E. Machulak, Machulak@lawmessage.com  
Eugene Bykhovsky, Eugene@lawmessage.com  
Andrew Newcombe, newcombe@uvic.ca

Respondent

Derek Smith, dsmith@dl.com  
Luis Parada, lparada@dl.com  
Tomás Solís, tsolis@dl.com  
Erin Argueta, eargueta@dl.com

10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)).

The parties would agree that the members of the Tribunal do not need to participate in person in sessions or hearings.

With regard to quorum, the parties agree that all members of the Tribunal should participate at hearings and sessions of the Tribunal by the means agreed by the Tribunal.

11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2)).

The parties would agree that the decisions of the Tribunal may be made by correspondence.

12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)).

The parties would agree that the power to fix time limits may be delegated on the President of the Tribunal.

13. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29).

El Salvador intends to file Preliminary Objections under the expedited procedure of CAFTA Article 10.20.5 by August 16, 2010. The parties believe the scheduling at this point of the proceeding should be limited to the Preliminary Objections phase.

The parties reserve the right to request a hearing after having had the opportunity to read the Preliminary Objections and the Response.

14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31).

The parties agree to two rounds of pleadings. The parties are working to reach an agreement on time limits and dates before the first session of the Tribunal.

The parties agree to electronic filing only, in a manner to be discussed with the Tribunal. Supporting documentation should accompany the pleading to which it relates.

15. Pre-Hearing Conference (Arbitration Rule 21).

The parties do not consider that scheduling a pre-hearing conference would be necessary at this point in time if there is a hearing in the Preliminary Objections phase.

16. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36).

N/A

17. Dates of Subsequent Sessions (Arbitration Rule 13(2)).

N/A

18. Publication of the Award (Arbitration Rule 48(4) and CAFTA Article 10.21).

The parties consent to the publication by ICSID of the award and any interim decision.

19. Non-disputing parties and *amicus curiae* (CAFTA Article 10.20).

The parties have not reached an agreement on the time limits for filing of any Non-disputing Party submissions or any *amicus curiae* submissions.

20. Hearings open to the public (CAFTA Article 10.21.2 2).

The parties agree that the hearings must be open to the public in accordance with CAFTA Article 10.21.2.2 and will work with the Tribunal and the ICSID Secretariat on the modality to implement this obligation.

## II. Other matters



**Annex C**  
**The Separate Preliminary Objections Calendars**

**Respondent's proposed calendar for Preliminary Objections  
under expedited procedure of CAFTA Article 10.20.5**

Constitution of Tribunal: July 1, 2010

Respondent's Preliminary Objections (45 days after constitution of Tribunal):  
August 15, 2010 (Sunday), due on Monday, August 16, 2010

Claimants' Response (45 days after Preliminary Objections):  
Thursday, September 30, 2010

Respondent's Reply (30 days after Response):  
October 30, 2010 (Saturday), due on Monday, November 1, 2010

Claimants' Rejoinder (30 days after Reply):  
Wednesday, December 1, 2010

Hearing (if requested by a party):  
Wednesday, December 15, 2010

Non-disputing Party submissions (if any); Amicus Curiae submissions (if any):  
Friday, December 31, 2010

Comments from Parties to submissions (if any):  
Thursday, January 13, 2011

**Potential dates for decision by Tribunal:**

Option 1 (no hearing, no extraordinary cause):  
150 days – Thursday, January 13, 2011

**Option 2 (hearing; or no hearing but extraordinary cause):**  
**180 days – Saturday, February 12/Monday, February 14, 2011**

**Option 3 (hearing and extraordinary cause):**  
**210 days – Monday, March 14, 2011**

**Claimants' proposed calendar for Preliminary Objections  
under expedited procedure of CAFTA Article 10.20.5**

Constitution of Tribunal: July 1, 2010

Respondent's Preliminary Objections (45 days after constitution of Tribunal):  
August 15, 2010 (Sunday), due on Monday, August 16, 2010

Claimants' Response (45 days after Preliminary Objections):  
Thursday, September 30, 2010\*

Respondent's Reply (21 days after Response):  
Thursday, October 21, 2010

Claimants' Rejoinder (21 days after Reply):  
Thursday, November 11, 2010

Non-disputing Party submissions; Amicus Curiae submissions:  
Wednesday, November 24, 2010

Comments from Parties to any submissions:  
Monday, December 6, 2011

Hearing (if requested by a party):  
Tuesday, December 14, 2010, or earlier if there are no submissions

**\*Claimant reserves the right to ask for an additional 15 days for response, depending on the substance of the Respondent's preliminary objections. If this occurs, 15 days will be added to the September 30, 2010 date, and the dates which follow.**

**Annex D**  
**The Joint Letter of August 13, 2010**

August 13, 2010

Members of the Tribunal  
Professor Dr. Albert Jan van den Berg  
Dr. Horacio A. Grigera Naón  
Mr. J. Christopher Thomas, QC  
c/o  
Mr. Marco Tulio Montañés-Rumayor  
Secretary of the Tribunal  
1818 H Street, NW  
MSN U3-301  
Washington, D.C. 20433

Re: Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador (ICSID Case No. ARB/09/17)

Dear Members of the Tribunal:

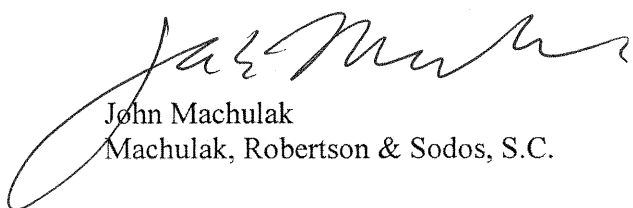
The Parties provide this joint letter to communicate to the Tribunal our further agreement regarding the procedures for the preliminary objections to be filed by El Salvador on or before August 16, 2010. During the first session of the Tribunal it was agreed that the response of the Claimants would be filed on or before September 15, 2010, with a proposed hearing date of October 26 or 28, 2010. Because of scheduling issues, these dates have been set aside and it would appear that there is a consensus that a hearing could be held on November 15, 2010.

Counsel for the Parties have conferred by telephone regarding these dates and reaffirmed their agreement with regard to the date of the Response and the date for any eventual hearing. The Parties further discussed their agreement expressed in the Draft Provisional Agenda jointly submitted to the Tribunal by the Parties on July 23, 2010 to have two rounds of written pleadings for the preliminary objections. The Parties concurred that two rounds of written pleadings would be advantageous to the Parties, would help to refine the issues for decision by the Tribunal and might obviate the need for a hearing, thus saving the Parties considerable time and expense. The Parties further agreed to a schedule for such pleadings that would not affect the November 15, 2010 hearing date. In this regard, the Parties have agreed that the Respondent's reply will be due on or before September 30, 2010, and the Claimant's rejoinder will be due on October 15, 2010. This will leave 30 days between the filing of the final written pleading and the possible hearing on November 15, 2010.

The Parties further discussed the possibility of the filing of additional preliminary objections after the decision on the preliminary objection to be filed on August 16. The Parties do not agree on how the rules should be interpreted. Therefore, the Respondent reserves any right it has to file additional preliminary objections, and the Claimant reserves any objection it has to such a filing, including objections as to timeliness.

In view of the parties' agreements expressed above, the parties respectfully request the Tribunal that these agreements be reflected in a Procedural Order, or in the alternative, in the Minutes of the First Session of the Tribunal, which have not yet been finalized.

Respectfully submitted,



John Machulak  
Machulak, Robertson & Sodos, S.C.



Derek C. Smith  
Dewey & LeBoeuf