

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Corona Materials, LLC

v.

Dominican Republic

(ICSID Case No. ARB(AF)/14/3)

PROCEDURAL ORDER NO. 1

Prof. Pierre-Marie Dupuy, President of the Tribunal
Mr. Fernando Mantilla-Serrano, Arbitrator
Mr. J. Christopher Thomas, QC, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski

Date of the Order: December 16, 2015

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Introduction

The first session of the Arbitral Tribunal was held on December 9, 2015, at 08:00am EST, by telephone conference. The session was adjourned at 9:20 a.m.

Participating in the conference were:

Members of the Tribunal:

Prof. Pierre-Marie Dupuy	President of the Tribunal
Mr. Fernando Mantilla-Serrano	Arbitrator
Mr. J. Christopher Thomas, QC	Arbitrator

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Ian Meredith	K&L Gates LLP
Ms. Ania Farren	K&L Gates LLP
Mr. Jake Ferm	K&L Gates LLP
Mr. James P. Duffy IV	K&L Gates LLP
Ms. Priya Chadha	K&L Gates LLP
Mr. Wojciech Sadowski	K&L Gates LLP

Participating on behalf of the Respondent:

Director Ms. Rosa Otero	Ministry of Environment and Natural Resources
Ms. Leslie Marmolejos	Ministry of Industry and Trade
Mr. Ariel Gautreaux	Ministry of Industry and Trade
Ms. Claudia Adames	Ministry of Environment and Natural Resources
Mr. Paolo Di Rosa	Arnold & Porter LLP
Mr. Raul Herrera	Arnold & Porter LLP
Mr. Jose Antonio Rivas	Arnold & Porter LLP
Ms. Catherine Kettlewell	Arnold & Porter LLP
Mr. Kelby Ballena	Arnold & Porter LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 27, 2015;

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- The Draft Procedural Order circulated by the Tribunal Secretary on October 27, 2015; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on December 4, 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present order:

Order

Pursuant to Article 27 and 28 of the ICSID Arbitration (Additional Facility) Rules, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

ICSID Additional Facility Rules, Article 6; ICSID Arbitration (Additional Facility) Rules, Articles 1, 28(2) and 35

- 1.1. These proceedings are conducted in accordance with the ICSID Additional Facility Rules in force as of April 10, 2006; and the Dominican Republic-Central America Free Trade Agreement ("CAFTA-DR"), in force in the United States since March 1, 2006, and in the Dominican Republic since March 1, 2007.

2. Constitution of the Tribunal and Tribunal Members' Declarations

ICSID Arbitration (Additional Facility) Rules, Article 13

- 2.1. The Tribunal was constituted on October 19, 2015, in accordance with Article 6(3) of the ICSID Arbitration (Additional Facility) Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with Article 13(2) of the ICSID Arbitration (Additional Facility) Rules. Copies of these declarations were distributed to the parties by the ICSID Secretariat on October 19, 2015.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

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3. Fees and Expenses of Tribunal Members

ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on the Fees and Expenses of ICSID Arbitrators

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

ICSID Arbitration (Additional Facility) Rules, Articles 22(2) and 28(1)(a)

4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Decisions and Procedural Rulings of the Tribunal

ICSID Arbitration (Additional Facility) Rules, Article 24

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal, and decisions shall be issued in writing.

5.2. Article 24(2) of the ICSID Arbitration (Additional Facility) Rules applies to decisions taken by correspondence except that where the matter is urgent and consultations with the other Members might unnecessarily delay the proceeding and cause harm to either party, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal, provided that:

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- 5.2.1. every effort has been made to contact both co-arbitrators by email and telephone to seek their views; and
 - 5.2.2. the President's decision is subject to reconsideration by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every one month.
- 5.4. All Procedural Orders shall be signed by all of the members of the Tribunal pursuant to Article 24 of the ICSID Arbitration (Additional Facility) Rules.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.
6. Delegation of Power to Fix Time Limits
ICSID Arbitration (Additional Facility) Rules, Article 33
 - 6.1. The President has the power to fix and extend time limits for the completion of the various steps in the proceeding after consultation with the parties.
 - 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
7. Secretary of the Tribunal
ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 25
 - 7.1. The Tribunal Secretary is Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
 - 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Mercedes Cordido-F. de Kurowski
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433

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USA

Tel.: + 1 (202) 473-3171

Fax: + 1 (202) 522-2615/2027

Email: mkurowski@worldbank.org

Paralegal email: dsotogarcia@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Ms. Mercedes Cordido-F. de Kurowski

701 18th Street, N.W. (“J Building”)

2nd Floor

Washington, D.C. 20006

Tel.: + 1 (202) 473-3171

8. Representation of the Parties

ICSID Arbitration (Additional Facility) Rules, Article 26

8.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

Mr. Ian Meredith

Ms. Ania Farren

Mr. Jake Ferm

K&L Gates LLP

One New Change

London EC4M 9AF

United Kingdom

Tel: +44 (0)20 7648 8171

Fax: +44 (0)20 7648 9001

Emails:

ian.meredith@klgates.com

ania.farren@klgates.com; and

jake.ferm@klgates.com

Mr. James P. Duffy IV

Ms. Priya Chadha

K&L Gates LLP

599 Lexington Avenue

New York, New York 10022

United States of America

Tel: +1 212 536 4019

For Respondent

Dr. Katrina Naut

Directora General de Comercio Exterior
y Administración de Tratados Comerciales

Ministerio de Industria y Comercio

Av. 27 de Febrero No. 209, Naco

Santo Domingo, D.N.

República Dominicana

Tel: 809-567-7192 ext. 1012

Fax: 809-381-8079

Emails:Katrina.naut@mic.gob.do

ariel.gautreaux@mic.gob.do

lmarmolejos@mic.gob.do

p.abreu@ambiente.gob.do

Rosa.Otero@ambiente.gob.do

Mr. Paolo Di Rosa

Mr. Raúl Herrera

Mr. José Antonio Rivas

Ms. Mallory Silberman

Ms. Catherine Kettlewell

Mr. Pedro Soto

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Fax: +1 212 536 3901
Emails:
jp.duffy@klgates.com
priya.chadha@klgates.com

Mr. Wojciech Sadowski
K&L Gates LLP
Pl. Malachowskiego 2
00-066 Warsaw
Poland
Tel : +48.22.653.4201
Fax : +48.22.653.4250
Email: wojciech.sadowski@klgates.com

**Ms. Natalia Giraldo and
Ms. Claudia Taveras**
Arnold & Porter LLP
601 Massachusetts Ave., NW,
Washington, DC 20001-3743
United States of America
Tel: 202-942-5060
Fax: 202-942-5999
Emails:
Paolo.dirosa@aporter.com
m.
Raul.herrera@aporter.com
m,
Jose.antonio.rivas@aporter.com
Mallory.silberman@aporter.com
Catherine.kettlewell@aporter.com
Pedro.soto@aporter.com
Natalia.giraldo@aporter.com
Claudia.Taveras@aporter.com

9. Apportionment of Costs and Advance Payments to ICSID
ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 14; ICSID Arbitration (Additional Facility) Rules, Articles 28(1)(f) and 58
- 9.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of October 21, 2015, ICSID requested that each party pay US\$200,000 to defray the initial costs of the proceeding. ICSID received the Claimant's payment on 18 November 2015. The Respondent to date has not made such payment. The Tribunal noted that by email of December 4, 2015, at the invitation of the Tribunal, counsel for Respondent informed that the Dominican Republic has taken the required internal steps in order to make its share of the advance payment promptly. During the first session, at the invitation of the President, Respondent confirmed that all steps have been taken to accomplish the payment, but that it does not know the specific day when the actual payment is going to be received by the Centre.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by an interim statement of account.

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10. Place of Arbitration
ICSID Arbitration (Additional Facility) Rules, Articles 19 and 20; and CAFTA-DR, Article 10.20(1)
 - 10.1. Washington, D.C. shall be the place (legal seat) of the arbitration.
 - 10.2. The Tribunal may hold hearings at any place that it considers appropriate following consultation with the parties.
 - 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation
ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulations 30(3) and (4); ICSID Arbitration (Additional Facility) Rules, Articles 28(1)(b) and 30.
 - 11.1. English and Spanish shall be the procedural languages of the arbitration.
 - 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.
 - 11.3. Any written requests and applications from the Parties shall be submitted in English or Spanish, provided that a translation of such document to the other procedural language is filed within three (3) consecutive days thereafter. However, should the Party filing the request or application require immediate reaction from the Tribunal, such request or application should be filed in English with the Spanish translation to follow within three (3) consecutive days.
 - 11.4. Pleadings, expert opinions, witness statements, and other accompanying documentation shall be submitted in one procedural language, provided that a translation of such document to the other procedural language is filed within fifteen (15) consecutive days thereafter. However, the translations of submissions on preliminary objections, should be filed within seven (7) consecutive days.
 - 11.5. If the document is lengthy and relevant only in part, it shall be sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation upon reasonable request of any party or on its own initiative.
 - 11.6. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal requests a certified version.
 - 11.7. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.

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- 11.8. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in one of the procedural languages shall be interpreted simultaneously into the other procedural language.
- 11.9. The Centre shall make the corresponding arrangements to have interpretation services provided at the hearing.
- 11.10. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
- 11.11. The Tribunal shall render any decision in English and Spanish simultaneously. Procedural Orders will be issued in either procedural language with the translation to follow.
- 11.12. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications

ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal once she has received both parties submissions.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.5. The email addresses of the Members of the Tribunal are:

Pierre-Marie Dupuy
pierre-
marie.dupuy@graduateinstitute.ch

Fernando Mantilla-
Serrano
fernando.mantilla@lw.com

J. Christopher
Thomas
jcthomas@thomas.ca

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13. Number of Copies and Method of Filing of Parties' Pleadings
ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 30; ICSID Arbitration (Additional Facility) Rules, Articles 28(1)(d) and 31
- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and indices of exhibits and legal authorities but not the exhibits or legal authorities themselves,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. The parties shall courier to the Tribunal Secretary within three (3) business days of the electronic filing date:
- 13.2.1. one (1) unbound hard copy in A4 Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
- 13.2.2. one (1) hard copy in A5 format of the entire submission including the pleading, the witness statements, and expert reports (but not including documents and legal authorities); and
- 13.2.3. three (3) USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.
- 13.3. Also within three (3) business days of the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.4 below:
- 13.3.1. one (1) hard copy in A5 format of the entire submission including the pleading, the witness statements, and expert reports (but not including documents and legal authorities); and
- 13.3.2. one (1) USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

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13.4. The addresses of the Tribunal Members are as follows:

Prof. Pierre-Marie Dupuy
37 Avenue de Budé,
Geneva, 1202 CH
Switzerland
+92 21 5879511

Mr. J. Christopher Thomas, Q.C.,
National University of
Singapore
Centre for International
Law
Block B, #02-01, 469
Bukit Timah Road
Singapore 259756
+1 514 286 2012

Mr. Fernando Mantilla-Serrano
Latham & Watkins LLP
45, RUE Saint-Dominique
Paris 75007
France

- 13.5. Documents and legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.6. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).
- 13.7. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
- 13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.
- 13.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
- 13.10. Two (2) weeks following the filing of a Party's submission and translations are received, a Party shall provide a USB drive, with an additional copy of the entire submission, this time with a hyperlinked index to all record references, to be couriered as follows: one (1) USB to opposing party; one (1) USB to each Member of the Tribunal at their respective addresses indicated at §13.4 above; and three (3) USBs to the Tribunal Secretary.

14. Number and Sequence of Pleadings

ICSID Arbitration (Additional Facility) Rules, Articles 28(1)(c), 38 and 45; and CAFTA-DR, Article 10.20

The parties agree as to the number and sequence of pleadings, but disagree on the procedural timetable for their filing. As a result, the Tribunal, having considered the views of the parties, has fixed the procedural timetable that follows:

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Preliminary Objections under CAFTA-DR Article 10.20.5

- 14.1. The Respondent filed Preliminary Objections under CAFTA-DR Articles 10.20.5 on December 3, 2015, and the English translation was provided on December 7, 2015;
- 14.2. The Claimant shall file a Counter-Memorial on Preliminary Objections by Friday, January 29, 2016, with the translation to follow by Friday, February 5, 2016;
- 14.3. The Respondent shall file a Reply on Preliminary Objections by Friday, February 19, 2016, with the translation to follow by Friday, February 26, 2016; and
- 14.4. The Claimant shall file a Rejoinder on Preliminary Objections by Friday, March 11, 2016, with the translation to follow by Friday, March 18, 2016.
- 14.5. The Claimant and the Respondent reserve their right to request a hearing on Preliminary Objections at the initiative of either. Considering the time restraints under CAFTA-DR and the established calendar, the parties were invited to consider the convenience of holding any such hearing by conference call rather than having an in-person meeting. At the parties' request, the Tribunal agreed that the parties may defer their decision on the modality of an eventual hearing on Preliminary Objections, if any, until Claimant has filed its Counter-Memorial on Preliminary Objections. In the event that it is decided to hold an in-person hearing on Preliminary Objections, the Tribunal would be available on April 18-19, 2016, provided that the hearing is held in Paris, and will keep those dates in reserve. The Parties are to confirm their availability on the proposed dates and their agreement to the proposed venue by **December 23, 2015**.
- 14.6. The Tribunal shall make its best efforts to render the decision on or before May 1, 2016 (150 days from the date of Respondent's Preliminary Objections request) and no later than May 31, 2016 (30 day extension on showing of an extraordinary cause, pursuant to Article 10.20.5). In view of the time restraints under CAFTA-DR and the established calendar, the Tribunal may issue its Decision on Respondent's Preliminary Objections by May 1, 2016, or May 31, 2016, as applicable, with the reasoning to follow as soon as possible.
- 14.7. The Respondent has reserved its right to submit any objection pursuant to Article 10.20.4 of CAFTA-DR.

Merits (and Jurisdiction, if applicable)

- 14.8. The Claimant shall file a Memorial on the Merits (and Jurisdiction, if applicable) by Wednesday, November 30, 2016, with the translation to follow by Thursday, December 15, 2016;

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- 14.9. The Respondent shall file a Counter-Memorial on the Merits (and Jurisdiction, if applicable) by Tuesday, May 30, 2017, with the translation to follow by Wednesday, June 14, 2017;
- 14.10. The Claimants shall file a Reply on the Merits (and Jurisdiction, if applicable) by Wednesday, August 30, 2017, with the translation to follow by Thursday, September 14, 2017; and
- 14.11. The Respondent shall file a Rejoinder on the Merits (and Jurisdiction, if applicable) by Thursday, November 30, 2017, with the translation to follow by Friday, December 15, 2017.
15. Production of Documents
ICSID Arbitration (Additional Facility) Rules, Articles 40 and 41
- 15.1. The Tribunal will set a schedule for document production requests after the filing of the Memorial on the Merits (and Jurisdiction, if applicable) and Counter-Memorial on the Merits (and Jurisdiction, if applicable). Any subsequent requests by a Party for production of documents will be decided upon the Tribunal on a case-by-case basis.
- 15.2. The Tribunal may seek guidance from, but shall not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration (2010 edition).
- 15.3. A Party may file the request to another Party for the production of documents or categories of documents within its possession, custody or control as indicated in § 15.1. Such request for production shall identify each document or category of documents sought with precision, in the form of a Redfern Schedule as attached in **Annex A** hereto, in both Word and PDF format, specifying why the documents sought are relevant and material to the outcome of the case.
- 15.4. The other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, provide the requesting Party and the Tribunal with its reasons and/or objections for its failure or refusal to produce responsive documents.
- 15.5. The requesting Party shall reply to the other Party's objections in that same Redfern Schedule.
- 15.6. The Tribunal will, in its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the other Party and all of the surrounding circumstances.
- 15.7. Documents shall be produced directly to the requesting Party without copying the

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Tribunal. Documents so produced shall not be considered to be on record unless and until the requesting Party subsequently files them as exhibits in accordance with § 16 below.

16. Submission of Documents

ICSID Additional Facility Rules, Article 5; ICSID Arbitration (Additional Facility) Rules, Articles 32 and 40-41; ICSID Administrative and Financial Regulation 30

16.1. The Memorial and Counter-Memorial shall be accompanied by all documentary evidence relied upon by the parties. Further documentary evidence relied upon by the parties may be submitted in rebuttal with the Reply and Rejoinder.

16.2. The documents shall be submitted in the manner and form set forth in §13 above.

16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

16.3.1. Should a party request leave to file additional or responsive documents, that party shall not annex to its request the documents that it seeks to file.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration (Additional Facility) Rule 41(2).

16.5. The documents shall be submitted in the following form:

16.5.1. Exhibits and Legal Authorities shall be numbered consecutively throughout these proceedings.

16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.

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- 16.5.3. All Exhibits should be numbered separately, even if they relate to the same subject matter. The pages of each exhibit should be numbered.
- 16.5.4. Exhibits and Legal Authorities shall also be submitted in PDF format and start with the number “C-____” and “R-____,” and “CL-____” and “RL-____,” respectively.
- 16.5.5. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. To avoid duplicating submissions, the parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) in the record from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
- 16.8. One month before the hearing, the parties should provide a joint chronology with record references. If a particular event is contested or a party has a different characterization of the event, each party can reserve its position by inserting their own comments, i.e. “C: [Claimant’s characterization]” and “R: [Respondent’s characterization]”.
17. Witness Statements and Expert Reports
ICSID Arbitration (Additional Facility) Rules, Articles 32, 40-41 and 43
- 17.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness. It should additionally bear the witness’ photograph.

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18. Submission by Non Disputing Parties
CAFTA-DR, Article 10.20.2

18.1 The Non-Disputing CAFTA-DR Parties shall be entitled to make oral and written submissions to the Tribunal within the meaning of Article 10.20.2. The Tribunal shall set the schedule for any submission from a Non-Disputing Party and the Parties shall have the opportunity to comment on such submission.

19. Examination of Witnesses and Experts
ICSID Arbitration (Additional Facility) Rules, Articles 42-43

19.1. Before a hearing and within time limits to be set by the Tribunal, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness whose statement has been provided with that party's written submissions. The Tribunal has the discretion to disregard the statement of any such witness who does not appear for examination and cross-examination at the hearing.

19.2. Witnesses and experts shall be examined at the hearing by the Parties under the control of the President of the Tribunal, and questions may also be put to them by Members of the Tribunal.

19.3. If necessary, the Tribunal in its discretion may allow a witness to be examined by videoconference and will issue appropriate directions to that effect.

19.4. At the hearing, the examination of each witness shall proceed as follows:

19.4.1. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address matters which have arisen after such statement was drafted ("direct examination").

19.4.2. The adverse Party may then cross-examine the witness on matters which are relevant and of which the witness has direct knowledge but not limited to matters addressed in that witness's written statement ("cross-examination").

19.4.3. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination ("redirect examination").

19.4.4. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

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- 19.5. Subject to a different agreement by the Parties or a different ruling by the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read transcripts of oral testimony or argument, prior to his or her examination, with the exception of one (1) party-representative from each side.
- 19.6. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
- 19.6.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
- 19.6.2. Direct that a witness be recalled for further examination at any time.
- 19.7. The rules set forth for witnesses above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts, with the following specifications:
- 19.7.1. After consultation with the Parties, the Tribunal may also request non-legal experts to give a presentation lasting no longer than thirty minutes before the start of their cross-examination summarizing their methodology and conclusions.
- 19.7.2. Subject to a different agreement by the Parties or a different ruling by the Tribunal, the limitation at § 19.5 shall not apply to expert witnesses.
20. Pre-Hearing Organizational Meetings
ICSID Arbitration (Additional Facility) Rules, Articles 21(2) and 29
- 20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after prior consultation with the parties by telephone among the Tribunal and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearings.
21. Hearings
ICSID Arbitration (Additional Facility) Rules, Articles 21(2) and 39; and CAFTA-DR Article 10.21.2
- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall be held at a place to be determined in accordance with §10 above.
- 21.3. The date of the hearing shall be determined at a later stage. The number of days of the hearing will be determined between the Parties considering procedural economy and efficiency criteria.

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- 21.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.5. Allocation of time and other procedural issues regarding the hearing shall be determined at the pre-hearing organizational meeting (pre-hearing conference call) to be held pursuant to §20 above.
- 21.6. Pursuant to CAFTA-DR Article 10.21.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the parties, the appropriate logistical arrangements.

22. Records of Hearings and Sessions

ICSID Arbitration (Additional Facility) Rules, Article 28(1)(g)

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 22.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 22.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or a similar program, and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 22.4. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections shall be provided to the Tribunal Secretary for their insertion by the court reporter(s) in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter(s).

23. Publication

ICSID Additional Facility Rules, Article 5; ICSID Administrative and Financial Regulation 22; ICSID Arbitration (Additional Facility) Rules, Article 53(3); CAFTA-DR Article 10.21

- 23.1. The Parties consent to the publication by ICSID of the award and any procedural order and decision.

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[*signed*]

Mr. Fernando Mantilla-Serrano
Arbitrator

[*signed*]

Mr. J. Christopher Thomas QC
Arbitrator

[*signed*]

Prof. Pierre-Marie-Dupuy
President of the Tribunal

December 16, 2015

