

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Suntech Power International Ltd.

v.

Italian Republic

(ICSID Case No. ARB/23/14)

PROCEDURAL ORDER NO. 3

Members of the Tribunal

Ms. Olufunke Adekoya SAN, President of the Tribunal
Ambassador (Ret.) David Huebner, Arbitrator
Prof. Thomas Clay, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

March 4, 2026

I. INTRODUCTION

1. By email dated 20 February 2026, the Claimant sought leave under section 16.3 of Procedural Order No. 1 (“PO1”) to submit into the record in these proceedings,
 - a. *“Six short documents obtained from public sources relating to the connections between Professors Vittorio Chiesa and Davide Chiaroni and the Italian government;*
 - b. *A legible copy of a map showing yearly electricity generated by a 1KW peak system across Italy, which is provided in illegible form at p. 70 of the GSE Guide to the Third Conto Energia at Exhibit C-53 and supplemental exhibit 20 to the Professors Second expert report, and*
 - c. *Two short publicly available articles which provide additional context to the Terra Firma transaction referred to at paragraph 6.14 of the second report of Professors Vittorio Chiesa and Davide Chiaroni of 19 December 2025.”*
2. In its email response of 24 February 2026, the Respondent opposes the application, stating that

No such special circumstances have been demonstrated here. In any event, pursuant to POI §16.3.1, a party requesting leave to file additional documents “may not annex the documents that it seeks to file to its request.” Claimant has nevertheless attached the documents in question, in clear contravention of the Procedural Order. For these reasons, Respondent requests that the Tribunal deny Claimant’s request. Should the Tribunal grant Claimant’s application for submission of additional documents, Italy reserves its right to make observations concerning such documents.

II. SUMMARY OF PARTIES’ POSITIONS

3. The Claimant asserts that special circumstances justify the late submission of these documents, emphasising their relevance to expert impartiality, evidentiary clarity, and

commercial valuation issues. In response to the Respondent's allegation that the Claimant had attached the documents it sought to submit to the record to its application to the Tribunal, the Claimant, in its response to the Respondent's objection, clarified that the documents were not attached to its application to the Tribunal. Rather, they were provided to the Respondent as a courtesy in advance of the formal request.

4. The Respondent has objected to the Claimant's application on two grounds. First, the Respondent argues that §16.3 of PO1 requires a showing of special circumstances, which the Claimant has not demonstrated. Second, the Respondent contends that §16.3.1 of PO1 prohibits annexing the documents to the application, a requirement it alleges the Claimant has violated. On these bases, the Respondent requests that the Tribunal deny the Claimant's application in its entirety, while reserving the right to comment on the documents should they be admitted.

III. TRIBUNAL'S ANALYSIS AND REASONING

5. The Claimant's application is brought under §16.3 of PO 1 which provides that *"Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party."* Such additional or responsive documents may be admitted only if the Tribunal determines, on the basis of a timely and reasoned written application, that special circumstances exist. The Tribunal must therefore determine whether special circumstances have been established.

6. In this respect, the Claimant stated that

There are special circumstances for granting our request for leave to submit the above documents. In respect to the first category of documents, we wish to submit these documents to provide information about the Professors affiliations with Italy which have not been disclosed by the Professors and which we have become aware of as we prepare for the hearing. As to the map referred to above, it has recently come to our attention that this map is not legible, and we would like to add a legible form to the record to

assist the parties and the Tribunal in using this document. As to the third category, we consider that the additional context provided by the publicly available sources about the Terra Firma transaction will assist the parties and the Tribunal in understanding the value of this transaction, which we do not consider has been fully and accurately described by the Professors in their report.

7. The Tribunal has reviewed the requests to admit three sets of documents as new evidence in these proceedings and provides its findings below in respect of each category of documents.

A. Legible Copy of the Map

8. The Claimant requested leave to submit a legible copy of a map showing the annual electricity generated by a 1KW peak system across Italy, to replace the previously illegible version included at page 70 of the GSE Guide to the Third Conto Energia, specifically as Exhibit C-53 and as supplemental exhibit 20 to the Professors' second expert report. It justifies this request on the grounds that the illegibility of the original map had only recently come to the Claimant's attention, and that the substitution is intended to assist the parties and the Tribunal in using this document.
9. The Tribunal notes that the Claimant seeks to replace an existing exhibit with a legible version of the same map, which is currently illegible in the record. The Tribunal considers that submitting a clearer copy does not introduce additional evidence but merely facilitates the effective use of an already-admitted exhibit. The Tribunal finds that, in these circumstances, the interests of procedural efficiency and clarity are best served by granting the Claimant's request to admit the legible copy of the map.

B. Documents Regarding Expert Affiliations and Terra Firma Transaction Articles

10. With respect to the six documents concerning expert affiliations and the two articles on the Terra Firma transaction, the Tribunal recalls that PO1 §16.3 requires a showing of special circumstances to admit additional documents after the established deadlines. The Tribunal has considered the Claimant's submissions regarding the experts' alleged nondisclosure and the asserted relevance of the Terra Firma articles. As an initial point,

the Tribunal notes that neither party provided the Tribunal with any legal jurisprudence to guide the Tribunal in determining what amounts to ‘special circumstances’ within the context of §16.3. On a review of the basis for this application however, the Tribunal is not satisfied that the circumstances described by the Claimant rise to the level of “special circumstances” as contemplated by §16.3 of PO1, as the special circumstances invoked could, with reasonable diligence, have been addressed at an earlier stage of the proceedings and, in any event, can be adequately considered within the existing evidentiary framework without the need to introduce further documents at this juncture.

C. Procedural Non-Compliance

11. The Tribunal also notes the Respondent’s objection that, in contravention of §16.3.1 of PO1, the Claimant annexed to its application copies of the additional documents it seeks to introduce. The Claimant has clarified that the documents were provided to the Respondent as a courtesy and were not annexed to the application filed with the Tribunal. The Tribunal finds, on the basis of the submissions, that there has been no procedural violation in the Claimant’s application process and that the advance provision of the documents to the Respondent was an inter partes courtesy, not a procedural filing.

IV. TRIBUNAL’S ORDER

12. For the reasons set out above, the Tribunal orders as follows:
 - i. The Claimant’s request to admit a legible copy of the map depicting yearly electricity generation by a 1KW peak system across Italy is granted. The legible copy shall replace the previously submitted illegible version at Exhibit C-53 and supplemental exhibit 20 to the Professors’ second expert report for all purposes in these proceedings.
 - ii. The Claimant’s request to admit the six documents relating to expert affiliations and the two articles regarding the Terra Firma transaction is denied, on the ground that special circumstances have not been established to the satisfaction of the Tribunal.
 - iii. The Tribunal finds no procedural violation in the Claimant’s application process.

- iv. The Respondent retains its right to comment on the newly admitted map, should it so wish.

On behalf of the Tribunal

[signed]

Ms. Olufunke Adekoya SAN[—]
President of the Tribunal
Date: March 4, 2026