

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AND UNDER THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

CHINA MACHINERY ENGINEERING CORPORATION

CLAIMANT

AND

THE REPUBLIC OF TRINIDAD AND TOBAGO

RESPONDENT

**CLAIMANT'S MEMORIAL
ON JURISDICTION AND MERITS**

Clifford Chance
Counsel for the Claimant

**C L I F F O R D
C H A N C E**

11 November 2024

TABLE OF CONTENTS

Index of Annexes	iv
A. Executive Summary	1
B. The Parties.....	2
B.1 The Claimant.....	2
B.2 The Respondent.....	3
C. Witness Statements, Expert Reports, Annexes, and Exhibits	4
D. General Factual Background	4
D.1 CMEC's Business Segments, Capabilities, and Practice.....	4
D.2 State Involvement Throughout the Lifecycle of the Project	7
(a) Trinidad and Tobago Cabinet.....	7
(b) Alutrint Limited.....	10
(c) High-ranking State Officials and Politicians	15
E. Facts and Circumstances of the Dispute.....	19
E.1 The Origins of the Project	19
E.2 Preliminary Project Discussions, Consultations, and Preparations.....	21
E.3 The 2005 EPC Contract	30
(a) Contract Scope, Price, and Documents	30
(b) Contract Terms	39
E.4 The 2008 EPC Contract	45
(a) Contract Scope, Price, and Documents	45
(b) Contract Terms	50
E.5 Delays and Cost Increases Through No Fault of CMEC	55
E.6 Sural Disengagement; Prior Proceedings Between Sural and GORTT	65
E.7 EPC Works Completed on the Project	73
(a) Overview	73
(b) Smelter Designs, Design Modifications, and Redesigns.....	81
E.8 Suspension and Termination of the Project	97
(a) First Suspension Following the 2009 High Court Decision	97
(b) Second Suspension Following the 2010 Change of Government	103
(c) The State's Announcement of Decision to Terminate the Project.....	109
(d) EMA's Withdrawal of Appeal Against the 2009 High Court Decision.....	116
(e) The State's Instruction to Terminate the Project.....	117
(f) CMEC's Notice of Termination of the EPC Contracts	121
E.9 CMEC's Persistent Pursuit of the Payment Claim	125
(a) Overview	125
(b) Settlement Discussions with UNC-led Government	128

(c)	PNM's Return to Government and Continued Settlement Discussions.....	134
E.10	Lead-up to This Arbitration	145
F.	Governing Law and Relevant Evidentiary Rules	146
F.1	Applicable law under the BIT	147
F.2	Applicable law under the ICSID Convention	151
G.	Evidentiary weight of statements by politicians and government officials.....	152
H.	Jurisdiction	152
H.1	The BIT	152
(a)	Jurisdiction <i>ratione personae</i> – "investor of the other Contracting Party"	153
(b)	Jurisdiction <i>ratione materiae</i> – "investment" of an "investor"	154
(c)	Jurisdiction <i>ratione temporis</i> – timing of the investment and dispute	157
(d)	Jurisdiction <i>ratione voluntatis</i> – consent to arbitration	157
H.2	The ICSID Convention	159
(a)	"Legal dispute"	159
(b)	"Arising directly"	159
(c)	Jurisdiction <i>ratione materiae</i>	160
(d)	Jurisdiction <i>ratione personae</i>	165
(e)	Jurisdiction <i>ratione voluntatis</i>	166
I.	Attribution: State Responsibility for Alutrint's conduct.....	166
I.1	Law applicable to questions of attribution	167
I.2	Alutrint's <i>raison d'être</i> was to exercise governmental authority.....	168
I.3	Alutrint was subject to the direction or control of the State	170
I.4	Conclusion.....	174
J.	Violations of the BIT and international law	174
J.1	Expropriation.....	174
(a)	Applicable BIT provisions.....	174
(b)	Most favoured nation treatment.....	178
(c)	Rules of international law	179
(d)	Particulars of claim	188
J.2	Fair and Equitable Treatment.....	203
(a)	Applicable BIT provision	204
(b)	Applicable rules of international law.....	206
(c)	Particulars of claim	207
J.3	Non-Impairment.....	220
J.4	Umbrella clause.....	223
K.	Extinctive Prescription	225

L.	Damages	228
L.1	Damages resulting from the State's Expropriation.....	229
L.2	Principles governing damages for the Additional Claims.....	234
L.3	Quantification of the Claimant's damages.....	237
M.	Orders and relief sought	243

INDEX OF ANNEXES

Annex 1	Scope of the Project and CMEC's EPC Contracts
Annex 2	Diagram of State Control over Alutrint (including annotated explanations of the roles, functions, and powers of various actors in the hierarchy of control)
Annex 3	List of Alutrint Directors and Management
Annex 4	Public Statements by Trinidad and Tobago Ministers and Former Ministers regarding the Project
Annex 5	High-Level Government Officials and Other Influential Government Stakeholders Involved in the Claim Negotiations with CMEC
Annex 6	Overview of the CECs Relevant to the Project
Annex 7	Chronology on CEC 1033/2005 (including the timeline of the CEC application and litigation)

A. EXECUTIVE SUMMARY

1. The Claimant's investment in Trinidad and Tobago involved designing and constructing the La Brea aluminium smelter complex (**Project**). In 2012, the Respondent (**Trinidad and Tobago** or **State**) terminated the Project for political reasons. Since that time, the State has repeatedly made false assurances that it will compensate the Claimant (**China Machinery Engineering Corporation** or **CMEC**) for the termination of the Project and related contractual rights. To this day, the State has not paid any compensation. The State's decade-long avoidance of its obligations has destroyed the Claimant's investment and is wrongful under international law.
2. The State's egregious treatment of CMEC fell so far short of any acceptable standard that even Trinidad and Tobago's current Prime Minister, the Honourable Dr Keith Rowley, saw a need to draw public attention to it. On 12 October 2022, the Prime Minister delivered a public address in which he noted that:
 - 2.1 the prior Trinidad and Tobago government "*improperly shut down*" and "*politically extinguished*" the aluminium smelter project;
 - 2.2 CMEC was thereafter "*chased out*" of the country by the prior government;
 - 2.3 when CMEC requested payment for the work it had carried out, the prior government "*did other things except deal with it*", simply "*danced around it*", or "*ignored*" CMEC's claims; and
 - 2.4 the prior government did not want the people of Trinidad and Tobago to know about this conduct because it constituted "*political action*" in respect of which there would be a "*cost*".¹
3. While this observation by the Prime Minister speaks for itself, an important note in the context of these proceedings is that international law attributes particular probative

¹ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>); **C-0494**, PNM's Facebook post on 14 October 2022, regarding Prime Minister Dr Keith Rowley's speech at the PNM's Diego Martin West 49th Constituency Conference.

value to such statements.² This Memorial will show that the Prime Minister's words were true in fact and will demonstrate that the State's conduct violated the obligations it owed to CMEC under the 2002 Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments (**BIT**).

4. As a result of this breach of international law by Trinidad and Tobago, CMEC suffered losses including the full loss of amounts due, loss of profit and overhead, and interest, which are conservatively estimated at US \$156,022,913.
5. Unless otherwise indicated, capitalised terms used in this Memorial have the meanings ascribed to them in the Claimant's Request for Arbitration dated 27 March 2023 (**Request for Arbitration**).

B. THE PARTIES

B.1 The Claimant

6. The Claimant is CMEC (formerly China National Machinery & Equipment Import & Export Corporation).³ CMEC is a company incorporated and constituted under the laws and regulations of the People's Republic of China (**China** or **PRC**) on 17 March 1982.⁴
7. CMEC is, and has always been, headquartered in Beijing, China. The address of its registered office is:⁵

No. 178 Guang'anmenwai Street
Xicheng District
Beijing 100055
People's Republic of China

² See Section G below.

³ **C-0005**, Notice of the Approval on Change Registration of CMEC dated 18 January 2011 (certified 24 February 2011).

⁴ **C-0004**, Business Licence of CMEC dated 25 January 2022 (certified 17 February 2022), p. 4.

⁵ *Ibid.*

8. CMEC is a member company of China National Machinery Industry Corporation (SINOMACH).⁶ During the period of 21 December 2012 to 6 August 2021, CMEC was listed on the Hong Kong Stock Exchange.⁷

B.2 The Respondent

9. The Respondent is Trinidad and Tobago, a parliamentary democracy with its executive being the Cabinet headed by the elected Prime Minister.⁸
10. The addresses for the State's Prime Minister and other relevant Ministers are:

Dr The Honourable Keith Rowley

Prime Minister of the Republic of Trinidad and Tobago
Office of the Prime Minister
13-15 St Clair Avenue
Port of Spain
Trinidad and Tobago, West Indies
Email: pmsec@opm.gov.tt

The Honourable Colm Imbert

Minister of Finance
Level 8, Finance Building
Eric Williams Financial Complex
Independence Square
Port of Spain
Trinidad and Tobago, West Indies
Email: colm.imbert@gov.tt

The Honourable Stuart Young

Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister
Tower C – Energy Trinidad and Tobago
International Waterfront Centre
No. 1, Wrightson Road
Port of Spain

⁶ **C-0535**, Consolidated company profile of CMEC (last accessed 26 June 2024), p. 1; **C-0532**, SINOMACH, *About Us* → *Member Companies*, <https://www.sinomach.com.cn/en/AboutUs/MemberCompanies/> (last accessed 6 October 2024).

⁷ **C-0520**, HKEXnews, Listed Company Information Search Results – Delisted Securities – "01829 CMEC", <https://www1.hkexnews.hk/search/titlesearch.xhtml?lang=en> (last accessed 5 August 2024).

⁸ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(a).

Trinidad and Tobago, West Indies

Email: syoung@energy.gov.tt

C. WITNESS STATEMENTS, EXPERT REPORTS, ANNEXES, AND EXHIBITS

11. This Memorial is submitted by CMEC pursuant to Annex B of Procedural Order No. 1 dated 22 May 2024 (as updated on 7 November 2024). It is supported by four witness statements from:

11.1 Mr Qingchi Wang;

11.2 Mr Qingchen Yang;

11.3 Ms Dandan Pei; and

11.4 Ms Xuemei Ouyang.

12. This Memorial is also supported by two expert reports from:

12.1 Mr Michael Tonkin, independent quantum expert, Chartered Quantity Surveyor and Partner at HKA; and

12.2 Mr Damian Connelly, independent engineering expert, Principal Consulting Engineer with METS Engineering and Independent Consulting Expert to HKA.

13. CMEC further includes seven Annexes, as indexed in the table of contents, which either summarise key aspects of the case or provide details that supplement the facts set forth in the body of the Memorial. The Annexes form an integral part of the Memorial.

14. Additionally, CMEC submits with this Memorial Factual Exhibits C-0060 to C-0634 and Legal Authorities CL-0020 to CL-0154. Unless otherwise indicated, page references to the factual exhibits are to the PDF page numbers (rather than the internal page references).

D. GENERAL FACTUAL BACKGROUND

D.1 CMEC's Business Segments, Capabilities, and Practice

15. CMEC has two core businesses:

- 15.1 international engineering contracting, in which CMEC undertakes engineering contracting projects around the world,⁹ with a primary focus on engineering, procurement and construction (**EPC**) projects;¹⁰ and
- 15.2 trading, which relates to CMEC principally exporting, and to a lesser extent, importing and domestically trading, complete sets of plant and equipment and various machinery, electrical, and instrumental products.¹¹
- 16. The Project falls under CMEC's international engineering contracting business.
- 17. CMEC's distinctive strengths in this business field compared to other international engineering contractors were crucial to the success of the Project. They include CMEC's ability:
 - 17.1 to provide one-stop customised and integrated engineering contracting solutions and services.¹² As part of these services, CMEC is able to offer effective project financing options by leveraging its cooperative relationships with various PRC financial institutions such as the Export-Import Bank of China (**China EXIM Bank**);¹³
 - 17.2 to price project offerings competitively due to its relatively lower costs of labour and complete sets of plant and equipment available in China;¹⁴ and
 - 17.3 to select subcontractors from its extensive network of qualified subcontractors¹⁵ that represent the best fit for individual projects.¹⁶ In particular, for project design, CMEC benefits from its long-established relationships with third-party

⁹ **C-0342**, IPO Prospectus of CMEC dated 11 December 2012, p. 9 ("International Engineering Contracting Business").

¹⁰ *Id.* p. 7 ("OVERVIEW").

¹¹ *Id.* p. 9 ("Trading Business").

¹² *Id.* pp. 9 ("OUR STRENGTHES"), 130 ("Scope of Our International Engineering Contracting Business": CMEC provides all or any combination of the following services: preliminary project consultation; financing solution management; project design; engaging and supervising qualified and suitable subcontractors; construction; procurement, logistics and installation of complete sets of plants and equipment; commissioning; personnel training; quality control and quality assurance; and/or warranty services and maintenance).

¹³ *Id.* p. 123.

¹⁴ *Id.* p. 100 ("Competitive fronts – Pricing").

¹⁵ *Id.* p. 9 ("Subcontracting Arrangement").

¹⁶ *Id.* p. 122.

design institutes (in addition to in-house design capabilities).¹⁷

18. In delivering the full-spectrum of turnkey services as EPC contractor, CMEC adopts an asset-light operating model and utilises a strategic subcontracting approach, which enables CMEC to focus on high-quality project execution, management and supervision, as well as project financing.¹⁸ This operating model also contributes financially to the relatively higher margin of CMEC's international engineering contracting business.¹⁹
19. Subcontracting aside, CMEC retains overall management oversight and quality control of each project through a dedicated project management team and is the single point of accountability insofar as employers are concerned.
20. In line with CMEC's general business practice, a number of subcontractors (and sub-subcontractors further down the chain of subcontracting) were involved in carrying out the works for the Project.
21. This list of subcontractors and sub-subcontractors included at least seven local companies in Trinidad and Tobago engaged at various stages of the Project.²⁰
22. The main Chinese subcontractors involved in the Project include:

22.1 **NEUI:** Northeastern University Engineering & Research Institute Co., Ltd.;²¹

¹⁷ *Id.* p. 152 ("Project design").

¹⁸ *Id.* pp. 7 ("OVERVIEW"), 9 ("OUR STRENGTHS"), 122.

¹⁹ *Id.* pp. 8, 282 ("Gross Profit").

²⁰ Some of the local subcontractors and sub-subcontractors and their responsibilities are summarised below:

RM Engineering Ltd.	Design approval from local regulatory agency
CE Management and Services Limited	Design approval from local regulatory agency
Gopeesingh General Contractors (1990) Ltd.	Construction of lay-down area
Spence Engineering Services Limited	Installation of concrete batching plant
Sure Security Services Limited	Site security services
Industrial Maintenance & Equipment Rental Limited	Demobilisation: Maintenance services to machinery and equipment
Gopaul & Company Limited	Demobilisation: Inland transportation and customs clearance

²¹ **C-0540**, Consolidated company profile of NEUI (last accessed 19 June 2024).

and

22.2 **CMIIC**: China CMIIC Engineering Corporation (now renamed China Machinery Industry Construction Group Inc. (**SINOCONST**)).²²

23. NEUI is a design institute, which provided design services for the Project from the first half of 2005.²³ In connection with the design, NEUI also provided the smelter technology for the Project.²⁴
24. CMIIC is a construction company. To streamline the project supervision and reduce the number of direct contracts and contact points that CMEC needed to manage, CMEC engaged CMIIC as the principal subcontractor for the EPC Contracts.²⁵ CMEC managed one (fixed-cost) subcontract with CMIIC,²⁶ and CMIIC in turn managed all the sub-subcontractors and their costs.
25. CMEC supervised NEUI's and CMIIC's works and managed the overall project execution and delivery.

D.2 State Involvement Throughout the Lifecycle of the Project

(a) Trinidad and Tobago Cabinet

26. Trinidad and Tobago's Cabinet (**Cabinet**) has the general direction and control of the Government of the Republic of Trinidad and Tobago (**GORTT** or **Government**),²⁷ and the effective control of the State's affairs.²⁸ The Cabinet is headed by the elected Prime

²² **C-0533**, SINOCONST, *Company Profile*, www.sinoconst.com.cn/gsgk/gsjj/ (last accessed 7 October 2024). SINOCONST is also a member of the SINOMACH group of companies: **C-0532**, SINOMACH, *About Us* → *Member Companies*, <https://www.sinomach.com.cn/en/AboutUs/MemberCompanies/> (last accessed 6 October 2024).

²³ **C-0065**, Engineering Proposal for Alutrint dated 15 May 2005; **C-0079**, Design Contract between CMEC and NEUI dated 19 January 2006; **C-0127**, Design Contract Supplement No. 1 between CMEC and NEUI dated 8 May 2007.

²⁴ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 4, 34.

²⁵ **C-0102**, Letter of Agreement between CMEC and CMIIC dated 22 September 2006; **C-0166**, Subcontract between CMEC and CMIIC dated 5 December 2008.

²⁶ **C-0166**, Subcontract between CMEC and CMIIC dated 5 December 2008, Clause 13.1.

²⁷ **C-0513**, Trinidad and Tobago Office of the Prime Minister, *About* → *Business and Departments of Government under the OPM* → *Cabinet*, <https://www.opm.gov.tt/about/business-and-departments-of-government-under-the-opm/> (last accessed 23 May 2024), p. 1.

²⁸ **C-0515**, Trinidad and Tobago Parliament, *Members* → *The Prime Minister*, <https://www.ttparliament.org/members/the-prime-minister/> (last accessed 23 May 2024), p. 1.

Minister²⁹ and consists of other Ministers chosen from among the members of Parliament.³⁰

27. All formal decisions regarding the Project, from its inception to termination, and thereafter to settlement strategy, were made by the Cabinet in the form of Cabinet Minutes.³¹ Examples include the following Cabinet decisions approving:

27.1 the proposal for a vertically integrated Project comprising the smelter and the downstream facilities (21 April 2005);³²

27.2 the severance of the smelter and the downstream elements of the Project, involving a renegotiated contract with CMEC at a substantially increased price for only the smelter element (21 February 2008);³³

27.3 the 2008 EPC Contract (defined below) with CMEC (6 October 2008);³⁴

27.4 the discontinuance of the Project with immediate effect on 8 September 2010³⁵ (which was followed by a coordinated public renunciation of the Project by the then Finance Minister Winston Dookeran in his 2011 budget speech on the same day);³⁶

27.5 the appointment of a committee to review CMEC's claims related to the Project and to develop recommendations for a negotiated settlement (13 February

²⁹ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(a); **C-0515**, Trinidad and Tobago Parliament, *Members → The Prime Minister*, <https://www.ttparliament.org/members/the-prime-minister/> (last accessed 23 May 2024), p. 1.

³⁰ **C-0513**, Trinidad and Tobago Office of the Prime Minister, *About → Business and Departments of Government under the OPM → Cabinet*, <https://www.opm.gov.tt/about/business-and-departments-of-government-under-the-opm/> (last accessed 23 May 2024), p. 1.

³¹ *Ibid.*

³² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, paras. 15, 26.

³³ **C-0388**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Closing Submissions, 3 October 2014, para. 26; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 101.

³⁴ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 117.

³⁵ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 114.

³⁶ **C-0252**, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 13 (internal page reference 11).

2014);³⁷ and

27.6 a statement to Parliament on the updated status of the Project,³⁸ and a re-constituted committee to review the outstanding issues regarding the Project and to negotiate a settlement with CMEC (November / December 2016).³⁹

28. Indeed, the Project – which was conceived at the turn of the millennium and remains unsettled to this day – involved four Trinidad and Tobago administrations:

28.1 the 1995-2001 United National Congress (**UNC**) administration led by UNC political leader Basdeo Panday;⁴⁰

28.2 the 2001-2010 People's National Movement (**PNM**) administration led by PNM political leader Patrick Manning;⁴¹

28.3 the 2010-2015 People's Partnership⁴² administration led by UNC political leader Kamla Persad-Bissessar;⁴³ and

28.4 the 2015 to date PNM administration led by PNM political leader Keith Rowley.⁴⁴

³⁷ **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

³⁸ *Id.* p. 24 ("*the Cabinet has authorized me to make the following statement on the status of the Alutrint Aluminium Smelter*").

³⁹ **C-0053**, Letter from MOF to CMEC dated 30 November 2016; **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), pp. 28-29.

⁴⁰ **C-0553**, Parliamentary biography of Basdeo Panday (consolidated). The UNC was in coalition with the National Alliance for Reconstruction (**NAR**) in 1995-2000 and later governed on its own in 2000-2001.

⁴¹ **C-0571**, Parliamentary biography of Patrick Manning (consolidated).

⁴² The People's Partnership (or abbreviated as **PP**) was a political coalition consisting of five political parties: the UNC, the Congress of the People (**COP**), the Tobago Organisation of the People (**TOP**), the National Joint Action Committee (**NJAC**), and the Movement for Social Justice (**MSJ**). The UNC led the coalition. Former FIFA Vice President Jack Warner, then Chairman of the UNC, was instrumental in the birth of the People's Partnership coalition: **C-0400**, *Highlights of Warner's political career*, Trinidad and Tobago Express, 26 May 2015.

⁴³ **C-0566**, Parliamentary biography of Kamla Persad-Bissessar (consolidated); **C-0526**, UNC Portfolio – Political Leader – Kamla Persad-Bissessar, SC, MP, <https://uncct.org/portfolio/political-leader/> (last accessed 14 September 2024).

⁴⁴ **C-0559**, Parliamentary biography of Dr Keith Rowley (consolidated); **C-0514**, Trinidad and Tobago Office of the Prime Minister, *About –> The Prime Minister*, <https://www.opm.gov.tt/about/prime-minister/> (last accessed 23 May 2024).

(b) Alutrint Limited

29. The State implemented the Project through Alutrint Limited (**Alutrint**),⁴⁵ which is owned and controlled by the State.
30. As recorded in the minutes of Alutrint's board meeting No. 001 on 22 April 2005 (held one day after the Cabinet's approval of the Project), Alutrint was "*assigned with overall responsibility for the Aluminium Transformation Complex – both upstream (smelter) and downstream (with the exception of the Technology Development Centre)*".⁴⁶
31. The State has at all times classified Alutrint as a "State Enterprise".⁴⁷ Moreover, Alutrint has been designated as a "State Enterprise" in the energy and energy-based sector that falls under the supervision of the Ministry of Energy and Energy Industries (**MEEI**).⁴⁸ According to Trinidad and Tobago's State Enterprises Investment Programme, "State Enterprises" refer to entities "*established for the enhancement of efficiency and effectiveness in the delivery of public goods and services*" and which have "*the overall objective of supporting Government Policy for the socio-economic development of Trinidad and Tobago*".⁴⁹
32. Alutrint is also categorised as "State Agency" in other official documents relating to governance in Trinidad and Tobago.⁵⁰

⁴⁵ This is the express representation from Alutrint's tender documents: **C-0069**, Alutrint tender documents for geotechnical services dated 13 September 2005, p. 1 ("*The Government of the Republic of Trinidad and Tobago (GORTT) through ALUTRINT intends to implement the development of a 125,000 Tonne Per Year (TPY) aluminum smelter*").

⁴⁶ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 69. The Technological Development Centre was developed by another entity named Alutech Limited, in respect of which see paragraph 191 below.

⁴⁷ The State publishes a complete list of the State Enterprises annually via the "State Enterprises Investment Programme" and Alutrint has been consistently listed as a State Enterprise. See **C-0575** to **C-0588** for the State Enterprises Investment Programmes 2012-2025.

⁴⁸ **C-0496**, Trinidad and Tobago Gazette, Vol. 62, No. 6 (Public Statement of the Ministry of Energy and Energy Industries), 13 January 2023, p. 2.

⁴⁹ **C-0588**, State Enterprises Investment Programme 2025, dated 30 September 2024, p. 7.

⁵⁰ See, e.g., **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 18 (citing MOF as the source of the categorisation); **C-0516**, Trinidad and Tobago Securities and Exchange Commission, *Appendix 1 - Categorization of State Agencies (Provisional)*, <https://www.tsec.org.tt/wp-content/uploads/MMRF-Categorization-of-State-Agencies-Appendix-1-01.04.19.pdf> (last accessed 28 May 2024), p. 1.

33. The State exercises effective control over Alutrint through (among other actors):
- 33.1 the MEEI,⁵¹ which is the sector-specific "Line Ministry" of Alutrint⁵² and determines Alutrint's day-to-day operations according to the relevant policy mandates.⁵³ The MEEI was the State organ responsible for initiating the Project – it presented the proposal to the Cabinet for the establishment of the Alutrint smelter and recommended that the Ministry of Finance (**MOF**) negotiate the required equity and loan financing for the Project;⁵⁴
- 33.2 the MOF,⁵⁵ which manages the State's entire portfolio of investments, including all State Enterprises.⁵⁶ The MOF, acting on behalf of GORTT, holds 60% shareholding of Alutrint⁵⁷ and has made available no less than 93% of Alutrint's actual equity funding;⁵⁸
- 33.3 the Standing Committee on Energy (**SCE**), which is an inter-ministerial committee chaired by the Prime Minister⁵⁹ that is charged with the responsibility of managing the State's energy sector via Government direction and policy;⁶⁰

⁵¹ The MEEI was once renamed the "Ministry of Energy and Energy Affairs" (**MEEA**) in 2010-2015 during the People's Partnership administration.

⁵² **C-0496**, Trinidad and Tobago Gazette, Vol. 62, No. 6 (Public Statement of the Ministry of Energy and Energy Industries), 13 January 2023, p. 2 (Alutrint being included within the MEEI's portfolio); **C-0502**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48 (Alutrint's "Ministry" being "Energy and Energy Industries").

⁵³ **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.

⁵⁴ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(f).

⁵⁵ The MOF was once renamed the "Ministry of Finance and the Economy" in 2012-2015 during the People's Partnership administration.

⁵⁶ **C-0512**, Trinidad and Tobago Ministry of Finance, *Divisions* → *Investments Division*, <https://www.finance.gov.tt/divisions/investments-division/> (last accessed 23 May 2024), p. 2.

⁵⁷ **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Recital (E).

⁵⁸ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 5; **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4 (shareholders' contribution as at 31 October 2013).

⁵⁹ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(b).

⁶⁰ **C-0468**, Trinidad and Tobago Office of the Prime Minister, *Statement by Prime Minister Rowley on his Meetings with Energy Companies*, 6 June 2019, <https://www.opm.gov.tt/prime-ministers-talking-points-on-energy-tour-of-duty-may-june-2019/> (last accessed 28 September 2024), p. 3.

- 33.4 the Natural Gas Export Task Force (**NGETF**), which was a sub-committee of the SCE chaired by Professor Kenneth Julien,⁶¹ the "*energy tsar*"⁶² and "*father of the downstream energy industry*"⁶³ in Trinidad and Tobago. The NGETF set the gas price and was responsible for downstream energy projects,⁶⁴ including the Project; and
- 33.5 the National Gas Company of Trinidad and Tobago Limited (**NGC**) and the National Energy Corporation of Trinidad and Tobago Limited (**NEC**), both of which play key roles in Trinidad and Tobago's natural gas-based energy sector.⁶⁵ In particular, NEC is mandated with the task of developing strategies to monetise the State's natural gas reserves.⁶⁶ GORTT, NGC and NEC financed and implemented the related infrastructural projects for the Alutrint smelter.⁶⁷
34. Annex 2 summarises the control relationships in the form of a diagram, and sets out in more detail the roles, functions, and powers of the various governmental ministries, committees, and other organisations involved in the hierarchical control of Alutrint.
35. Annex 3 provides detailed information on the directors and management of Alutrint from its establishment to today. The appointments to the board of directors of State Enterprises are largely politically driven in Trinidad and Tobago.⁶⁸
36. Below is a brief timeline of major events relating to Alutrint, which will be further explained in the following sections where necessary:

⁶¹ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c).

⁶² **C-0501**, *UTT honours Prof Ken Julien* (with full text of Prime Minister Keith Rowley's feature address), Trinidad and Tobago Express, 31 October 2023, p. 7.

⁶³ *Id.* p. 8.

⁶⁴ **C-0242**, *Ken Julien resigns from NEC*, Trinidad and Tobago Express, 30 June 2010.

⁶⁵ **C-0525**, Trinidad and Tobago Minister of Energy and Energy Industries, *For Investors -> Companies*, <https://www.energy.gov.tt/for-investors/companies/> (last accessed 5 September 2024), pp. 1-2.

⁶⁶ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(d).

⁶⁷ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, paras. 4, 38.

⁶⁸ **C-0508**, Trinidad and Tobago Chamber of Industry and Commerce, *Appointments to State Boards*, <https://chamber.org.tt/wp-content/uploads/2015/11/appointments-state-boards-hk-mn-sep-24-15.pdf> (last accessed 9 May 2024), p. 1.

- 36.1 on 8 April 2005, NEC (appointed by GORTT to be the Project sponsor)⁶⁹ incorporated Alutrint under the name of Trinalco Limited;⁷⁰
- 36.2 on 1 June 2005, Trinalco Limited's name was changed to Alutrint;⁷¹
- 36.3 in August 2006, GORTT (acting through the Minister of Finance as Corporation Sole) elected to hold its equity interest directly in the Project (rather than through NEC);⁷²
- 36.4 on 8 September 2006, Sural Barbados Limited (**Sural Barbados**), a member of the Sural Group of companies (collectively, **Sural**), was incorporated in Barbados;⁷³
- 36.5 on 3 July 2007, GORTT and Sural Barbados entered into a Unanimous Shareholders' Agreement which provided for their respective 60:40 shareholding in Alutrint.⁷⁴ With its majority shareholding, GORTT was entitled to appoint the majority of Alutrint's directors, including its Chairperson;⁷⁵
- 36.6 by December 2007, Sural decided to disengage from the Project⁷⁶ – it ceased funding Alutrint⁷⁷ and discontinued performing the Unanimous Shareholders' Agreement;⁷⁸

⁶⁹ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 59.

⁷⁰ **C-0008**, Articles of Incorporation of Alutrint dated 5 April 2005; **C-0007**, Trinidad and Tobago Companies Registry Online Search Facility, "Alutrint", <https://www.legalaffairs.gov.tt/> (last accessed 27 February 2023).

⁷¹ **C-0009**, Certificate of Amendment of Alutrint dated 1 June 2005.

⁷² **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 1.

⁷³ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, paras. 1, 48.

⁷⁴ **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Recital (E). Although the Unanimous Shareholders' Agreement itself was undated, it is common ground between GORTT and Sural Barbados that the agreement was signed on 3 July 2007: **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 7.

⁷⁵ **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Clauses 9.1.1 and 9.2.1.

⁷⁶ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 96 (under the heading "Sural's disengagement from Smelter project: December 2007").

⁷⁷ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, paras. 170-171 (under heading D.3.3 "GORTT alone was financing Alutrint").

⁷⁸ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 269 ("Sural never had any intention of performing the Shareholders Agreement once it had decided to disengage at the end of 2007").

- 36.7 as a result, from 2008 onwards, the call for Alutrint Board meetings and the frequency of meetings held markedly decreased;⁷⁹
- 36.8 the role of Alutrint's Board was further diminished to a minimum as if "*Alutrint functioned without a Board of Directors*" after the change of government in May 2010⁸⁰ (which led to over a year's temporary absence of any GORTT directors);⁸¹
- 36.9 on 28 June 2012, Sural directors formally exited Alutrint's Board,⁸² which has thereafter consisted solely of GORTT directors;⁸³ and
- 36.10 on 13 March 2013, Alutrint passed a restructuring plan with a phased separation of employees.⁸⁴
37. GORTT and Sural subsequently engaged in years of legal disputes concerning the Unanimous Shareholders' Agreement,⁸⁵ which ultimately resulted in a confidential settlement agreement on 20 June 2017 that ended four sets of legal proceedings.⁸⁶
38. After the Project was renounced by the State in 2010, GORTT has indicated that Alutrint remains in existence as a non-operational company to "*wind up [the] various agreements and deal with the implications of those contracts. It is to be borne in mind for example that [...] CMEC is pursuing a claim for USD 169 million against Alutrint in respect of the cancellation of that contract.*"⁸⁷ Unfortunately, now after more than a

⁷⁹ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 50.

⁸⁰ **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 2.

⁸¹ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 58, 60.

⁸² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 46.

⁸³ Details regarding Alutrint's directors after 28 June 2012 are set out in Sections I to J of Annex 3.

⁸⁴ **C-0374**, Alutrint 2012 Audited Financial Statements dated 20 March 2014, p. 24.

⁸⁵ **C-0354**, ICC Case No. 18799/VRO/AGF/ZF, Terms of Reference dated 5 June 2013; **C-0517**, S.D. Fla. Case No. 1:15-cv-22825-KMM, Civil Docket (last accessed 2 July 2024); **C-0518**, 11th Cir. Case No. 16-15942, General Docket (last accessed 2 July 2024).

⁸⁶ **C-0441**, 11th Cir. Case No. 16-15942, Sural Barbado's Motion to Stay Appeal Pending Closing of Settlement, 25 July 2017, p. 4.

⁸⁷ **C-0388**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Closing Submissions, 3 October 2014, para. 108(5).

decade, Alutrint has still not paid any compensation to CMEC for the cancellation of the Project and/or the termination of related contractual rights.

(c) High-ranking State Officials and Politicians

39. As mentioned above, the Project has been dealt with by four political administrations of Trinidad and Tobago, spanning a period of over 20 years. Given its scale and importance, the Project has received extensive public attention throughout its lifecycle.
40. In particular, the abrupt decision of the People's Partnership administration (including the UNC) to abandon the Project in 2010 has caused significant controversy in both the political arena of Trinidad and Tobago and the broader national community. Since then, and every year thereafter, in Parliament, at press conferences, or on public platforms, high-ranking State officials and politicians have been asked about – and indeed have oftentimes voluntarily made statements on – the ramifications of the termination of the Project, including the impairment of investment protection and the resulting contractual liabilities.
41. As a result, numerous high-ranking (including the highest-ranking) State officials and politicians have made contemporaneously recorded public statements concerning the Project. Some of these statements provide detailed background facts, and indeed some of them contain direct admissions of the political nature of the termination decision and the substantial unsettled liabilities to CMEC.
42. Annex 4 compiles **29** of these relevant statements by Trinidad and Tobago Ministers and former Ministers, which form an important part of the Claimant's submissions. The source videos, official transcripts, and/or news reports (as annotated in the Annex) are all submitted as factual exhibits.
43. Non-exhaustively, a few of the most closely involved high-ranking politicians and their representative statements are set out below:
 - 43.1 **incumbent Prime Minister Dr Keith Rowley**, who has taken over CMEC's claim from the former People's Partnership administration since his PNM

administration assumed office in September 2015:⁸⁸

43.1.1 on the cancellation of the Project – the Project was "*politically extinguished*" and "*improperly shut down*" with the contractor being "*chased out*";⁸⁹ a decision based on "*purely political considerations*"⁹⁰ that shut out "*committed investors to the creation of the aluminium industry*"⁹¹ (emphases added);

43.1.2 on CMEC's pursuit of its claim in respect of the Project – "*the contractor kept making their claims*"⁹² and "*outlined in detail all that has happened from the day they got involved with the project until now that they're making this claim*";⁹³ and

43.1.3 on the present arbitration after CMEC lodged its Request for Arbitration

⁸⁸ **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015; **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>), p. 3 ("*one of the first things I had to deal with when I came in as Prime Minister, is a Chinese company producing to me a claim for US \$200 million*").

⁸⁹ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

⁹⁰ **C-0258**, M. Fraser, *Rowley: Decision to scrap smelter a political move*, Trinidad and Tobago Express, 3 October 2010, p. 1.

⁹¹ **C-0385**, Trinidad and Tobago Hansard, 12 September 2014 (4th Sitting – 5th Session – 10th Republican Parliament), p. 23 (internal page reference 371).

⁹² **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>), p. 1.

⁹³ **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>), p. 3.

– CMEC "*is now pressing its claim legally*"; and the damages "*is certainly at the end of the day something **substantial***" (emphasis added).⁹⁴

43.2 **incumbent Finance Minister Colm Imbert**, who has been CMEC's main Minister-level point of contact for the claim negotiations since 2016:⁹⁵

43.2.1 responding to a question on the outstanding debt of the State – "*taxpayers of this country will have to treat with*" CMEC's "*current claim against the Republic of Trinidad and Tobago for the **capricious decision** of the last Government to simply cancel that project*" (emphasis added).⁹⁶

43.3 **former Finance Minister Winston Dookeran**, who announced the People's Partnership administration's decision to discontinue the Project in his budget speech in September 2010:⁹⁷

43.3.1 explaining the rationale and economics of the termination decision – "*the decision was a campaign promise*"; "*it was a **loss the Government had to accept** as well as its legal burden*" (emphasis added).⁹⁸

43.4 **former Energy Minister Carolyn Seepersad-Bachan**, to whom Alutrint

⁹⁴ **C-0498**, Address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>, last accessed 18 September 2024); **C-0499**, Transcription of address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>).

⁹⁵ See, e.g., **C-0052**, Letter from CMEC to Finance Minister C. Imbert dated 6 April 2016; **C-0419**, Photo of meeting between Mr Colm Imbert, Minister of Finance of Trinidad and Tobago, and CMEC on 8 November 2016 at the Ministry of Finance; **C-0420**, Letter from CMEC to Finance Minister C. Imbert dated 9 November 2016; **C-0426**, Letter from CMEC to Finance Minister C. Imbert dated 18 November 2016.

⁹⁶ **C-0451**, Trinidad and Tobago Hansard, 2 March 2018 (20th Sitting – 3rd Session – 11th Republican Parliament), p. 10 (internal page reference 676).

⁹⁷ **C-0252**, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 13 (internal page reference 11).

⁹⁸ **C-0254**, A. Javeed, *Stopping smelter comes with legal challenges*, Trinidad and Tobago Guardian, 14 September 2010.

directors reported⁹⁹ and who was in charge of the review of the Project¹⁰⁰ after the People's Partnership coalition came into power:

43.4.1 on third-party Norwegian experts' observations of the safety of modern aluminium smelters¹⁰¹ – "[I am] *not convinced by them since it was not Norwegian but Chinese who were involved in the construction of the smelter plant*"; "***I am not confident they [i.e. the Chinese] can build a plant in accordance with standards***" (emphasis added);¹⁰² and

43.4.2 after a Cabinet Note¹⁰³ suggested that the continuation of the Project would lead to significant benefits and that the discontinuation would come with astronomical costs – "[t]his (the position paper) has nothing to do with going back on our decision"; "there is ***no reversal of the People's Partnership campaign promise*** in so far as the aluminium smelter plant at La Brea is concerned" (emphases added).¹⁰⁴

44. In addition, there are many other high-level government officials and other influential government stakeholders directly involved in the claim negotiations with CMEC, as summarised in Annex 5 and will be further addressed in Section E.9 below.

⁹⁹ **C-0026**, Emails among F. Look Kin, S. Luo, P. Julien and J. Duo from 28 May 2010 to 2 June 2010 (Frank Look Kin (then Alutrint Chairman)'s email of 28 May 2010: "*With the appointment of Mrs. Carolyn Seepersad Bachan as the new Minister of Energy and Energy Affairs, a briefing paper on the project would be prepared for presentation to the new Minister to assist in an early determination of the future of the company.*"); **C-0242**, Ken Julien resigns from NEC, Trinidad and Tobago Express, 30 June 2010 ("[Seepersad-Bachan] has a report submitted by the directors of Alutrint detailing the status of the proposed smelter to be built at the Union Industrial Estate. The report, she said, will be discussed in the Cabinet tomorrow.").

¹⁰⁰ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010; **C-0250**, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010 ("I have done an analysis of all the projects associated with Alutrint so that the Cabinet can appreciate where we stand in terms of our commitment, contractual obligations and possibly expenditure.").

¹⁰¹ **C-0223**, I. Arjoon, *Norway expert: Cancer low in smelter towns*, Trinidad and Tobago Newsday, 4 March 2010; **C-0225**, D. Dickson, *Chinese technology for aluminium smelter*, Trinidad and Tobago Guardian, 10 March 2010.

¹⁰² **C-0226**, C. Asson, *COP knocks Govt on alutrint*, Trinidad and Tobago Newsday, 15 March 2010.

¹⁰³ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010. Government Ministers make submissions in the form of Cabinet Notes for consideration by Cabinet: **C-0513**, Trinidad and Tobago Office of the Prime Minister, *About –> Business and Departments of Government under the OPM –> Cabinet*, <https://www.opm.gov.tt/about/business-and-departments-of-government-under-the-opm/> (last accessed 23 May 2024), p. 1.

¹⁰⁴ **C-0250**, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010.

E. FACTS AND CIRCUMSTANCES OF THE DISPUTE

45. The Claimant now turns to set out the facts and circumstances of the underlying dispute between the Parties.

E.1 The Origins of the Project

46. Since the late 1960s, Trinidad and Tobago has considered establishing an aluminium industry. A former Energy Minister, Dr Lenny Saith, explained at a Symposium on the Aluminium Industry:

*"Every decade [after the 1960s] saw various administrations either reviewing proposals tabled by companies or commissioning studies on the benefits of the industry to the country. The aluminum industry was seen as one of very significant strategic importance for the diversification of the nation's economy."*¹⁰⁵

47. Trinidad and Tobago is well placed to develop an aluminium industry due to its ability to generate high amounts of electric power required for the smelting process.¹⁰⁶ Additionally, this electricity may be competitively priced because it can be generated from Trinidad and Tobago's substantial natural gas reserves.¹⁰⁷ Further, alumina (the raw material from which aluminium is extracted) may conveniently be sourced from Trinidad and Tobago's sister Caricom nations.¹⁰⁸

¹⁰⁵ **C-0112**, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, p. 5.

¹⁰⁶ Large quantities of electricity are required for the electrolytic process that extracts aluminium from its oxide, alumina: **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 16; **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, p. 90 ("Smelter Process Description").

¹⁰⁷ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 17; **C-0112**, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, p. 4; **C-0210**, Ministry of Energy and Energy Industries, *The Aluminium Allure – Why the Establishment of an Aluminum Industry in Trinidad?*, in GASCO News Vol. 22, No. 3, October 2009, p. 6 ("The Power Advantage").

¹⁰⁸ **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 26 ("Advantage on Raw Material"); **C-0456**, Feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>, last accessed 1 June 2024); **C-0457**, Transcription of feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>), p. 1 (Rowley: "We had our neighbours who had alumina or bauxite, we have

48. In a wider context, an aluminium smelter was considered as the "*starter element*" of an aluminium industry in Trinidad and Tobago that could broaden its economy and steer it away from its dependency on oil, gas and petrochemicals.¹⁰⁹
49. Because aluminium is strong, light, durable, and climate efficient, it has been considered in Trinidad and Tobago to have tremendous downstream potential for use in a wide variety of manufacturing activities.¹¹⁰ Compared to the traditional primary gas processing industries, the aluminium industry extends further downstream in the natural gas value creation chain and offers significant economic diversification benefits through generation of substantial employment and downstream manufacturing activities.¹¹¹
50. Indeed, as pointed out by Dr Lenny Saith, all Trinidad and Tobago administrations since the late 1960s have, to a greater or lesser extent, seen the benefits of going into aluminium. The wide and long-standing support for an aluminium industry is highlighted in a 2009 Trinidad and Tobago Guardian newspaper article reporting that there was "*bi-partisan support for aluminium and the diversification of [Trinidad and Tobago]'s natural gas-led industrialisation*".¹¹²
51. In 1998, the State – under a UNC administration – sought to build a 474,000 metric-tonne-per-year (**mtpy**) aluminium smelter. It was to be constructed by Norway's Norsk Hydro.¹¹³

energy, we have a good labour force, and we could bring them all together and get involved in the aluminium industry").

¹⁰⁹ **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 25.

¹¹⁰ This is in addition to the fact that an aluminium smelter is by itself a major employment generator as smelters are labour intensive relative to other process and manufacturing plants. It is estimated that 700 plus workers would be required to operate the smelter plant throughout its 30-year project life: **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 24.

¹¹¹ **C-0112**, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, p. 7; **C-0210**, Ministry of Energy and Energy Industries, *The Aluminium Allure – Why the Establishment of an Aluminum Industry in Trinidad?*, in GASCO News Vol. 22, No. 3, October 2009, pp. 5-6; **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, paras. 22-23 ("*Key benefits to Trinidad and Tobago's development*").

¹¹² **C-0198**, A. Wilson, *Are T&T's environmentalists anti-people?*, Trinidad and Tobago Guardian, 22 July 2009, p. 2.

¹¹³ **C-0060**, *Norsk Hydro Reaches an Agreement To Build Aluminum Plant in Trinidad*, Wall Street Journal, 13 November 1998.

52. At the signing ceremony of the project agreement with Norsk Hydro in November 1998, the then Prime Minister and UNC political leader Basdeo Panday described it as "*a most important and an historic occasion*" and "*a new dawn*" for Trinidad and Tobago, marking the final mile in "*Trinidad and Tobago's 30-year quest to establish a local smelter*".¹¹⁴
53. For various reasons, the Norsk Hydro smelter failed to materialise.
54. In 2001, Dr Alfredo Riviere of Sural, a Venezuela-headquartered downstream aluminium products manufacturer,¹¹⁵ began initial discussions regarding a smelter project with representatives of Prime Minister Basdeo Panday (of the UNC), including Professor Kenneth Julien.¹¹⁶ This marks the beginning of the Project. Despite the UNC's decision to scrap the Project after it returned to power in 2010 (discussed below), the initiation of the Project in fact traces back to a UNC administration.

E.2 Preliminary Project Discussions, Consultations, and Preparations

55. Discussions between Sural and the State continued in 2002-2003, under a Patrick Manning-led PNM administration.¹¹⁷
56. As Sural brought to the table only its experience in aluminium fabrication and a related sales network, it was necessary for the State to provide the following:¹¹⁸
 - 56.1 land, marine and other infrastructural facilities;
 - 56.2 electricity supply;
 - 56.3 fiscal incentives;

¹¹⁴ Basdeo Panday's feature speech on 12 November 1998 was quoted and reproduced in **C-0097**, Trinidad and Tobago Hansard, 25 August 2006 (39th Sitting – 4th Session – 8th Republican Parliament), pp. 26-29 (internal page reference 114-117) and **C-0198**, A. Wilson, *Are T&T's environmentalists anti-people?*, Trinidad and Tobago Guardian, 22 July 2009. A fuller excerpt of the speech is included in footnote 34 of Annex 4 (pp. 24-25).

¹¹⁵ **C-0541**, Consolidated company profile of Sural (last accessed 11 August 2020); **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 47.

¹¹⁶ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 54.

¹¹⁷ *Id.* paras. 55-57.

¹¹⁸ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, paras. 12-13; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, paras. 55-56.

- 56.4 equity investment; and
- 56.5 support of a financing plan to present to international lenders.
57. To meet these infrastructural requirements, NGC applied in February 2003 to the Environmental Management Authority of Trinidad and Tobago (**EMA**) for a Certificate of Environmental Clearance (**CEC**) for the development and expansion of an industrial estate at Union, La Brea (**CEC 0394/2003**).¹¹⁹ La Brea is located on the southwestern peninsula of Trinidad,¹²⁰ one of the less developed areas in the nation with a high unemployment rate.¹²¹ The area is a PNM stronghold.¹²²
58. In December 2003, a detailed Environmental Impact Assessment (**EIA**) report for the proposed industrial estate at Union was completed.¹²³ The EIA stated an aluminium smelter and its required support facilities (such as a power plant) were the preferred option for the estate.¹²⁴ On 24 March 2004, the EMA granted CEC 0394/2003.¹²⁵
59. For the Project to be viable, however, several crucial components remained missing, including the aluminium production (i.e. smelting) technology, design and construction capabilities, and debt financing. At about this point in time, CMEC – with the ability to offer one-stop integrated EPC solutions including assistance in accessing financing –

¹¹⁹ **C-0595**, "CEC Summary" published online by the EMA (consolidated), p. 2; **C-0063**, CEC 0394/2003 dated 24 March 2004, p. 1.

¹²⁰ **C-0062**, Environmental Impact Assessment Report for the Establishment of an Industrial Estate at Union, La Brea, dated December 2003, p. 30 (under 1.7 "PROJECT LOCATION", which explains the reasons for the location selection).

¹²¹ **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 24.

¹²² The constituency of La Brea has consistently elected PNM representatives in past elections. Incumbent Prime Minister Keith Rowley attributed the 2010-2015 People's Partnership administration's decision to shut down the smelter as a move to "*spite the PNM and to spite [voters] here in La Brea and in Point Fortin*": **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>), p. 3.

¹²³ **C-0062**, Environmental Impact Assessment Report for the Establishment of an Industrial Estate at Union, La Brea, dated December 2003.

¹²⁴ *Id.* p. 11.

¹²⁵ **C-0063**, CEC 0394/2003 dated 24 March 2004.

came into the picture.

60. In 2003, CMEC held talks with the State's Ministry of Trade and Industry regarding the export of machinery and electrical products. Although the contemplated export did not materialise, through those talks and follow-ups, CMEC was informed about Trinidad and Tobago's plan to establish an aluminium smelter in the country. As part of its preliminary project consultation services, CMEC immediately engaged in technical exchanges and business discussions with Trinidad and Tobago.¹²⁶
61. In October 2004, Trinidad and Tobago, after discussions with CMEC, decided to use Chinese technology for the aluminium smelter.¹²⁷
62. In November 2004, CMEC dispatched a delegation to Trinidad and Tobago to further the Project discussions, including technology selection, smelter capacity, investment budget, and contract type. At this point in time, CMEC obtained a preliminary undertaking that it would be contracted to construct the Project.¹²⁸ A Memorandum of Understanding was signed on 9 November 2004.¹²⁹
63. In or around January 2005, NEC (appointed by the State as the Project's sponsor¹³⁰) provided CMEC with a large package of engineering data and various completed studies, reports, and other materials associated with the Project (covering e.g. topographic, meteorological, hydrological, geological, geotechnical, and seismic aspects).¹³¹ CMEC spent considerable time and resources studying the information provided and began working on a concrete, feasible proposal for the implementation of the Project.¹³²
64. From 19 to 24 March 2005, a high-level delegation comprising representatives of the State and Sural visited China to (a) conduct detailed negotiations with CMEC regarding

¹²⁶ **C-0098**, SINOMACH's Report to MOFCOM dated 25 August 2006, pp. 4-5 (Chinese); p. 4-5 (English).

¹²⁷ *Id.* p. 5 (Chinese); p. 5 (English).

¹²⁸ *Id.* p. 5 (Chinese); p. 5 (English).

¹²⁹ **C-0006**, Memorandum of Understanding dated 23 March 2005, para. 10 (referring to the 9 November 2004 Memorandum).

¹³⁰ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 59.

¹³¹ **C-0064**, Package of documents provided by NEC to CMEC in January 2005.

¹³² Witness statement of Qingchi Wang, para. 19.

its undertaking of the Project and (b) hold friendly discussions with the Ministry of Commerce of China (**MOFCOM**) and the China EXIM Bank (with the assistance of CMEC) regarding finance for the Project.¹³³

65. Matters agreed during this visit were documented in a confidential Memorandum of Understanding dated 23 March 2005 (**23 March 2005 MOU**) signed by:¹³⁴

65.1 Professor Kenneth Julien, Chairman of NGETF, for and on behalf of GORTT;

65.2 Mr Keith Awong, Chairman of NEC;

65.3 Ms Alison Lewis, Permanent Secretary of MOF;

65.4 Dr Alfredo Riviere, President of Sural; and

65.5 Mr Biao Xie and Ms Haixi Song, respectively President and Vice President of CMEC.

66. The principal terms of the 23 March 2005 MOU include:

66.1 smelter capacity: 125,000 mtpy or above, including a self-sufficient anode plant with a minimum initial capacity of 75,000 mtpy;¹³⁵

66.2 smelter technology: 300 kiloamperes (**kA**) or above¹³⁶ (a brief explanation of the technology is included in paragraph 75 below);

66.3 smelter quotation / pricing: US \$2,200 per tonne, i.e. US \$275 million for a 125,000 mtpy smelter, subject to (a) certain exclusions and (b) adjustments based on the complete scope of works;¹³⁷

66.4 type of contract: EPC on an exclusive basis – CMEC would be designated the exclusive EPC contractor of the Project upon GORTT's approval of the

¹³³ **C-0006**, Memorandum of Understanding dated 23 March 2005, p. 1 (recitals).

¹³⁴ *Id.* p. 3 (signature page).

¹³⁵ *Id.* p. 1 (para. 1).

¹³⁶ *Id.* p. 1 (para. 1).

¹³⁷ *Id.* p. 2 (para. 5).

Project;¹³⁸ and

66.5 financing structure: 30% equity and 70% debt / loan financing.¹³⁹

67. Pausing here, it is pertinent to note two points:

67.1 the Project was awarded through one-on-one tender negotiations between CMEC and the Project sponsors. The quotation was based on "cost per tonne", an output approach that is commonly used in the metals industry. CMEC's quotation of US \$2,200 per tonne was accepted as "*competitive*",¹⁴⁰ indeed, "*very competitive*";¹⁴¹ and

67.2 a further driver in the State's reasons for engaging CMEC as the EPC contractor was to secure access to Chinese smelting technology and Chinese financial institution financing.¹⁴²

68. Shortly after the China visit, on 8 April 2005, NEC incorporated Alutrint (originally named Trinalco Limited) under Trinidad and Tobago's Companies Act, 1995.¹⁴³ Professor Kenneth Julien (Chairman, NGETF), Mr Keith Awong (Chairman, NEC), and Mr Leroy Mayers (Permanent Secretary, MEEI) were named as directors.¹⁴⁴

69. On 21 April 2005, the Trinidad and Tobago Cabinet approved the Project.¹⁴⁵

70. On 22 April 2005, NEC filed a CEC application for a 125,000 mtpy aluminium smelter

¹³⁸ *Id.* p. 2 (para. 4).

¹³⁹ *Id.* p. 2 (para. 6).

¹⁴⁰ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 10; **C-0383**, ICC Case No. 18799/VRO/AGF/ZF, Hearing Transcripts, Volume 2, 8 September 2014, 159:21-25.

¹⁴¹ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.7.

¹⁴² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 33; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 65.

¹⁴³ **C-0008**, Articles of Incorporation of Alutrint dated 5 April 2005; **C-0007**, Trinidad and Tobago Companies Registry Online Search Facility, "*Alutrint*", <https://www.legallaffairs.gov.tt/> (last accessed 27 February 2023).

¹⁴⁴ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 24. For more information about Kenneth Julien, Keith Awong, and Leroy Mayers, please refer to Notes A1 to A5 of Annex 3.

¹⁴⁵ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, paras. 15, 26.

(CEC 1033/2005).¹⁴⁶ This is the main (but not the only) CEC relevant to the Project. Annex 6 provides an overview of the relevant CECs covering different activities associated with the Project and their respective dates of application and issuance; and Annex 7 contains a chronology of events specific to CEC 1033/2005.

71. On the same day, Alutrint held its board meeting No. 001, the minutes of which recorded, among other things, (a) the Cabinet approval of 21 April 2005,¹⁴⁷ (b) NEC's CEC application of 22 April 2005,¹⁴⁸ and (c) that Alutrint "*would be assigned with overall responsibility for the Aluminium Transformation Complex – both upstream (smelter) and downstream (with the exception of the Technology Development Centre)*".¹⁴⁹
72. Meanwhile in China, after confirmation of the Project capacity, budget, and technological requirements in the 23 March 2005 MOU, CMEC expedited the selection of an appropriate design institute capable of offering smelting technology that operates at or above 300kA at a price that could work well with the US \$2,200 per tonne overall budget.¹⁵⁰
73. The search led CMEC to NEUI, a specialist design institute principally engaged in engineering consultation, engineering design, and development of related new technologies and equipment for nonferrous and ferrous metals industry.¹⁵¹
74. At the time, NEUI's 300kA technology – the "NEUI300" – was one of the newest, most advanced 300kA technology in China's aluminium industry. 300kA technology (described below) was already a proven technology in China as it had been successfully deployed to construct 14 potlines with a total output of 2,600,000 mtpy.¹⁵²
75. In aluminium smelting, 300kA technology refers to the use of electrolytic cells (also

¹⁴⁶ *Id.* para. 27.

¹⁴⁷ *Id.* para. 26.

¹⁴⁸ *Id.* para. 27.

¹⁴⁹ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 69.

¹⁵⁰ Witness statement of Qingchi Wang, para. 21.

¹⁵¹ **C-0540**, Consolidated company profile of NEUI (last accessed 19 June 2024), p. 1 (Chinese); p. 1 (English).

¹⁵² **C-0065**, Engineering Proposal for Alutrint dated 15 May 2005, pp. 21-22.

known as "pots") that operate at a current of 300 kA to reduce alumina into aluminum.¹⁵³ It is a modern pre-bake technology (involving using pre-baked anodes) that represents a significant improvement over and mitigates much of the health and environmental risks associated with the old Söderburg technology.¹⁵⁴ Higher amperage cells, like those operating at 300kA or above, are designed to enhance current efficiency, reduce energy consumption, increase production capacity, and lower environmental emissions.¹⁵⁵

76. On 15 May 2005, NEUI completed the draft engineering proposal for the Project based on its 300kA technology.¹⁵⁶ The proposal was submitted to Alutrint in June 2005.¹⁵⁷

77. On 15 June 2005, representatives of CMEC and Alutrint met at NEC's office.¹⁵⁸ Discussions at this meeting (as well as some after-meeting updates dated 16 June 2005) were recorded in a set of minutes signed on 17 June 2005. Amongst other things:

77.1 smelter capacity (after discussions on 125,000 mtpy vs. 250,000 mtpy): 125,000 mtpy, with a plant layout that accommodates a future expansion to 250,000 mtpy;¹⁵⁹

77.2 smelter technology: Chinese 300kA technology;¹⁶⁰

77.3 codes and standards: CMEC to use Chinese codes and standards unless Trinidad and Tobago's local codes and regulations are (a) mandatory (i.e. not guidelines only) and (b) superior to Chinese codes and standards;¹⁶¹ and

77.4 loan financing: CMEC to assist obtaining loan financing from the China EXIM

¹⁵³ **C-0065**, Engineering Proposal for Alutrint dated 15 May 2005, p. 22; **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, p. 34.

¹⁵⁴ **C-0210**, Ministry of Energy and Energy Industries, *The Aluminium Allure – Why the Establishment of an Aluminum Industry in Trinidad?*, in GASCO News Vol. 22, No. 3, October 2009, p. 7 ("Health, Safety and Environmental Concerns").

¹⁵⁵ **C-0065**, Engineering Proposal for Alutrint dated 15 May 2005, pp. 19, 20.

¹⁵⁶ **C-0065**, Engineering Proposal for Alutrint dated 15 May 2005.

¹⁵⁷ **C-0089**, Engineering Quality Control Plan for Alutrint Aluminum Smelter dated 2 June 2006, p. 3 ("Project Milestones").

¹⁵⁸ **C-0066**, Minutes of meeting between Alutrint and CMEC on 15 June 2005 in Couva, Trinidad and Tobago (signed 17 June 2005), p. 1.

¹⁵⁹ *Id.* p. 3 (9:00).

¹⁶⁰ *Id.* p. 3 (9:00).

¹⁶¹ *Id.* p. 3 (8:00).

Bank, noting that it would be necessary for GORTT to formally initiate the request for a financing programme for the Project.¹⁶²

78. On 22 July 2005, the then Prime Minister and Minister of Finance, Patrick Manning, formally wrote to the Chinese Ambassador in relation to financing the Project. The letter indicated that GORTT was requesting US \$400 million in finance through a combination of a Buyer's Credit and a Concessionary Loan with a net effective rate of 4% for a period of 5-7 years – "[t]his we believe should make the project commercially viable".¹⁶³
79. On 21 September 2005, CMEC submitted the formal engineering proposal for the Project.¹⁶⁴ As part of the proposal, CMEC included information on the proposed management team organisation (both on-site and off-site) and the core personnel it had already assembled for the Project.¹⁶⁵
80. On 30 September 2005, the China EXIM Bank issued a letter of intent to CMEC, confirming its preliminary commitment to grant a Buyer's Credit facility to finance the Project with GORTT as guarantor.¹⁶⁶ The Concessionary Loan portion was separately processed.
81. In November 2005, Alutrint and CMEC further progressed the technical preparations for the Project:
- 81.1 on 4 November 2005, Alutrint and CMEC entered into the Alutrint Aluminium Smelter Technical Design Agreement which contained more detailed technical specifications for the 125,000 mtpy smelter;¹⁶⁷
- 81.2 on 6 November 2005, Alutrint approved the plant general layout (revision 0)¹⁶⁸

¹⁶² *Id.* p. 2 (3:00).

¹⁶³ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 35.

¹⁶⁴ **C-0070**, Engineering Proposal for Alutrint Aluminium Smelter Part 1 – Commercial Documents dated 21 September 2005.

¹⁶⁵ *Id.* pp. 31-52.

¹⁶⁶ **C-0071**, Letter of Intent from China EXIM Bank dated 30 September 2005

¹⁶⁷ **C-0073**, Alutrint Aluminium Smelter Technical Design Agreement dated 4 November 2005.

¹⁶⁸ **C-0074**, Letter from Alutrint to CMEC (with attachment) dated 6 November 2005.

– the Claimant notes however that for over four years following this approval, the plant general layout was (unusually for an EPC project) changed no less than 15 times;¹⁶⁹ and

81.3 on 11 November 2005, Alutrint reviewed and signed off on 147 drawings in connection with the 300kA preliminary design.¹⁷⁰

82. By that time, having already invested two years in the Project since 2003, CMEC had completed or assisted with the completion of all essential preparatory requirements for the Project and was all set to formally enter into the 2005 EPC Contract (discussed in Section E.3 below).

83. As contemporaneously acknowledged by GORTT and Alutrint officials, CMEC – through its packaged EPC services, including leading technology from a specialist design institute and low-interest financing from a large financial institution – was pivotal in making the Project "**technically feasible, economically viable, and environmentally compliant**",¹⁷¹ which set in motion "for the first time" Trinidad and Tobago's plans to establish an aluminium industry in "a very real way".¹⁷²

83.1 Philip Julien, son of Professor Kenneth Julien and then Acting Chief Executive Officer (CEO) of Alutrint,¹⁷³ emphasised in an interview in 2009 that Alutrint was "an economically priced smelter" that was "being built at a lower capital cost than most of the recent smelters in the western world because of the advantage of working with a Chinese design, technology and the very attractive debt financing".¹⁷⁴

¹⁶⁹ **C-0174**, Letter from Alutrint to CMEC (with attachment) dated 24 March 2009 (approving general layout revision 15).

¹⁷⁰ **C-0072**, Drawings reviewed by Alutrint in November 2005 (with Alutrint's counter-signatures on pp. 11-147).

¹⁷¹ **C-0219**, Address by Senator the Honourable Conrad Enill, Minister of Energy and Energy Industries, at the Signing Ceremony of the Alutrint/Votorantim Project Agreement on 4 December 2009, p. 11; **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, p. 16.

¹⁷² **C-0112**, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, p. 7 (address by the then Energy Minister Dr Lenny Saith).

¹⁷³ For more information about Philip Julien, please refer to Note K2 of Annex 3.

¹⁷⁴ **C-0212**, A. Wilson, *Alutrint profitable in five years*, Trinidad and Tobago Guardian, 22 October 2009, p. 2. See also Sural's submission in this regard: **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.7 ("*The construction price and the favorable loan terms from the Exim Bank of China virtually ensured success.*").

- 83.2 Carolyn Seepersad-Bachan, Trinidad and Tobago's then Energy Minister, acknowledged in her 2010 Cabinet Note that technology transfer was a major benefit this Project would bring to Trinidad and Tobago – given that the Chinese technology is "*one of the most advanced*" and "*the most efficient and cleanest*" technologies in aluminium smelting.¹⁷⁵

E.3 The 2005 EPC Contract

(a) Contract Scope, Price, and Documents

84. On 20 December 2005, Alutrint as employer and CMEC as contractor entered into an EPC contract in relation to the Project (**2005 EPC Contract**).¹⁷⁶ Prime Minister Patrick Manning attended the signing ceremony in Port of Spain.¹⁷⁷
85. The scope of "*Works*" for the 2005 EPC Contract is specified as "*the Engineering, Procurement, Construction, Commissioning, Start-up of the Alutrint Aluminum Complex, at the Union Estates Industrial Area in the Republic of Trinidad and Tobago*", including more specifically:¹⁷⁸
- 85.1 smelter (midstream): an aluminium smelter "*with a nominal annual production output of 125,000 tons molten aluminum, which includes an anode plant with annual production output of 75,000 tons of anodes*";
- 85.2 associated upstream: "*the Port Facilities*" (including the dock and storage yard, the material storage and handling facilities, and the conveyor system¹⁷⁹); and
- 85.3 associated downstream: "*the Rod Casting, Wire and Cable facilities*".
86. The contract price for these "*Works*" was a lump sum US \$465 million (**subject to**

¹⁷⁵ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 22(d).

¹⁷⁶ **C-0011**, 2005 EPC Contract dated 20 December 2005.

¹⁷⁷ **C-0098**, SINOMACH's Report to MOFCOM dated 25 August 2006, p. 1 (Chinese); p. 1 (English).

¹⁷⁸ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 2 (Contract Agreement, Whereas Clause).

¹⁷⁹ **C-0106**, Alutrint Aluminium Complex Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006, Section 1.2; **C-0133**, Agreement of Dock and Material Handling Facilities for Alutrint Aluminium Complex dated 8 August 2007, Sections 1.3-1.4, 4.2.3.1.

variations and adjustments¹⁸⁰ including currency adjustments¹⁸¹), with a subsequent proposed breakdown as follows:¹⁸²

- 86.1 smelter (midstream): US \$275 million, i.e. US \$2,200 per tonne in line with the 23 March 2005 MOU quotation;¹⁸³
 - 86.2 associated upstream: US \$55 million; and
 - 86.3 associated downstream: US \$135 million.
87. There are a number of express exclusions from (and thus additional to) the US \$465 million price – in respect of which separately priced contracts would be entered into – including among others:¹⁸⁴
- 87.1 training of operating and maintenance staff;
 - 87.2 geotechnical investigation; and
 - 87.3 foundation treatment and piling (the method of which would be dependent on the results of the geotechnical investigation).
88. Notably, training of operating and maintenance staff would be an important means of the technology and knowledge transfer to Trinidad and Tobago (on which it placed high importance¹⁸⁵) and a long-term continued investment by CMEC. It was agreed from the outset that *"the plant will be operated and maintained initially under the direct supervision of the Chinese design engineering and construction teams who will have the responsibility for on-going training and technology transfer to their local counterparts"* so as to ensure the running of the smelter *"in strict accordance with*

¹⁸⁰ **C-0011**, 2005 EPC Contract dated 20 December 2005, pp. 76-77 (Conditions of Contract, Sub-Clause 14.1 including sub-paragraphs (a) to (c)).

¹⁸¹ *Id.* p. 77 (Conditions of Contract, Sub-Clause 14.1, sub-paragraph (c)).

¹⁸² **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46; **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 22 (Chinese); pp. 20-21 (English).

¹⁸³ **C-0006**, Memorandum of Understanding dated 23 March 2005, para. 5.

¹⁸⁴ **C-0011**, 2005 EPC Contract dated 20 December 2005, pp. 76-77 (Conditions of Contract, Sub-Clause 14.1).

¹⁸⁵ **C-0112**, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, p. 8 (Energy Minister Dr Lenny Saith emphasising that *"the Alutrint project is being undertaken in partnership with international companies with considerable experience in the aluminum industry. The transfer of technology and expertise will be made part of the contractual arrangements."*).

*design standards and standard operational procedures".*¹⁸⁶ The full transition to local management and operations was expected to take place approximately 5 years post plant start-up.¹⁸⁷

89. Although the anticipated training contract did not materialise before the Project was prematurely terminated, CMEC invested considerable time in developing the workforce development plan,¹⁸⁸ training proposal,¹⁸⁹ and other deliverables,¹⁹⁰ and attending other relevant discussions and preparations,¹⁹¹ at Alutrint's request and on the expectation (and without contrary indication by GORTT) that this separate contract was to be executed.¹⁹²
90. For budgeting purposes, Alutrint estimated US \$75 million's "owners' costs" (operating capital to be funded by the shareholders) to cover these costs that fell outside the 2005 EPC Contract and some other Project-related costs and expenses.¹⁹³ This made an estimated total investment cost of US \$540 million,¹⁹⁴ which was formally approved by the Cabinet on 15 March 2007.¹⁹⁵
91. Taking a closer look at the 2005 EPC Contract, it is a composite of contract documents

¹⁸⁶ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, p. 78.

¹⁸⁷ **C-0211**, Letter from Alutrint to CMEC (with attachment) dated 20 October 2009, p. 6.

¹⁸⁸ **C-0204**, Letter from CMEC to Alutrint (with attachments) dated 19 August 2009.

¹⁸⁹ **C-0172**, Letter from CMEC to Alutrint (with attachment) dated 16 March 2009.

¹⁹⁰ **C-0135**, Technical Issues Booklet for the August 2007 Technical Meeting, pp. 12-17 (Training Plan of Alutrint Smelter); **C-0136**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 10 August 2007 in Beijing, China, p. 5 (Item 6. Agreement on technical training plan scope: "*CMEC submitted a plan for Alutrint review. A discussion was held to clarify the breakdown of personnel for each specialized structure. Further discussions are to be continued regarding location, content and duration for training.*").

¹⁹¹ **C-0211**, Letter from Alutrint to CMEC (with attachment) dated 20 October 2009; **C-0213**, Email from S. Mohammed to J. Duo (with attachment) dated 29 October 2009.

¹⁹² **C-0211**, Letter from Alutrint to CMEC (with attachment) dated 20 October 2009, p. 1 (Alutrint representing that it "*has started the process of developing a separate contract, to be agreed with CMEC, for workforce training and development in support of the Operation and Maintenance of the Aluminium Smelter.*").

¹⁹³ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46.

¹⁹⁴ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46; **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 65.

¹⁹⁵ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 82.

comprising the following (in order of priority):¹⁹⁶

91.1 the Contract Agreement;¹⁹⁷

91.2 the Conditions of Contract (including the Annexes, as well as an Interpretation Agreement for the purposes of interpreting certain Annexes and Sub-Clauses of the Conditions of Contract);¹⁹⁸

91.3 all technical specifications, including:

91.3.1 the Alutrint Aluminium Smelter Technical Design Agreement dated 4 November 2005;¹⁹⁹ and

91.3.2 the Engineering Proposal for Alutrint Aluminium Smelter Part 1 – Commercial Documents dated 21 September 2005;²⁰⁰

91.4 the 23 March 2005 MOU;²⁰¹ and

91.5 any other documents forming part of the 2005 EPC Contract, including technical literature and drawings.

92. The 10 Annexes to the Conditions of Contract (as listed in the Annexes Schedule)²⁰² would be developed after the 2005 EPC Contract was signed, as some information was not available at the time of signing (such as price break-down) and/or would evolve as the Project progressed (such as information and data furnished by Alutrint). In fact, as events unfolded, while the parties later managed to prepare some content for the Annexes, their full finalisation was superseded by the contract renegotiations that led to the 2008 EPC Contract (discussed below).

¹⁹⁶ **C-0011**, 2005 EPC Contract dated 20 December 2005, pp. 2 (Contract Agreement, items (a) to (e)), 15 (Conditions of Contract, Sub-Clause 1.5).

¹⁹⁷ *Id.* pp. 2-4.

¹⁹⁸ *Id.* pp. 5-104.

¹⁹⁹ **C-0073**, Alutrint Aluminium Smelter Technical Design Agreement dated 4 November 2005.

²⁰⁰ **C-0070**, Engineering Proposal for Alutrint Aluminium Smelter Part 1 – Commercial Documents dated 21 September 2005.

²⁰¹ **C-0006**, Memorandum of Understanding dated 23 March 2005.

²⁰² **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 7 (Annexes Schedule of Conditions of Contract).

93. All documents forming the 2005 EPC Contract are to be taken as mutually explanatory of each other despite the assigned order of priority of the documents if required for the purposes of interpretation in the event of a (non-reconcilable) conflict.²⁰³
94. Further, any mutually agreed amendment, modification, or interpretation to any document forming a part of the 2005 EPC Contract would also be part of the 2005 EPC Contract and take precedence over any conflicting provision in the documents.²⁰⁴
95. Indeed, a number of such amendments, modifications, and/or interpretations have been made in subsequent years.
96. On the technical front, the amendments and supplements, which were substantial, were mainly documented in the following technical specification documents:
- 96.1 Upstream: Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006;²⁰⁵
- 96.2 Downstream: Technical Design Agreement for Metal Products Facility dated 2 October 2006;²⁰⁶
- 96.3 Upstream: Agreement of Dock and Material Handling Facilities dated 8 August 2007;²⁰⁷ and
- 96.4 Smelter: Technical Scheme Description dated 10 August 2007.²⁰⁸
97. These technical specification documents and updates thereto consolidated the results of numerous technical meetings and/or technical related correspondences where variations were instructed, proposed, and/or discussed.²⁰⁹

²⁰³ *Id.* p. 15 (Conditions of Contract, Sub-Clause 1.5).

²⁰⁴ *Id.* p. 2 (Contract Agreement).

²⁰⁵ **C-0106**, Alutrint Aluminium Complex Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006.

²⁰⁶ **C-0107**, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006.

²⁰⁷ **C-0133**, Agreement of Dock and Material Handling Facilities for Alutrint Aluminium Complex dated 8 August 2007.

²⁰⁸ **C-0137**, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August 2007.

²⁰⁹ The main design modifications and their circumstances will be detailed in Section E.7(b) below.

98. Relatedly, in respect of the downstream facilities, in October 2006, Alutrint instructed CMEC to employ Sural as the "Nominated Subcontractor" to take responsibility for *"the technical specifications, procurement, start-up and commissioning for the rod mills, sow casting and wire and cable plant"*.²¹⁰ CMEC retained other aspects of the downstream works such as engineering, construction, and installation.²¹¹
99. On the commercial side of the Project, some progress was made on formulating the breakdown of the US \$465 million contract price.

99.1 In March 2006, in connection with financing the Project, Alutrint issued a Feasibility Study to the China EXIM Bank (**Alutrint Feasibility Study**).²¹² The Alutrint Feasibility Study contained a dedicated section on "Project Capital Costs",²¹³ which provided the following price breakdown:

125,000 mtpy Alutrint Aluminium Complex		
(1)	Smelter	US \$275 million
(2)	Rod mill	US \$90 million
(3)	Wire and cable plant	US \$45 million
(4)	Port facilities	US \$55 million
	Sub-total	US \$465 million
(5)	Owner cost	US \$75 million
	Total	US \$540 million

99.2 The Alutrint Feasibility Study however was not in conformity with PRC financial institutions' customary format and content requirements for a feasibility study. For the China EXIM Bank to commence due diligence on a particular project, its set practice requires a borrower-government approved

²¹⁰ **C-0107**, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006, p. 2; **C-0104**, Minutes of meeting between Alutrint and CMEC on 1 October 2006 in Beijing, China (signed 2 October 2006), p. 1 ("Nomination of Subcontractor").

²¹¹ **C-0104**, Minutes of meeting between Alutrint and CMEC on 1 October 2006 in Beijing, China (signed 2 October 2006), pp. 1-2 ("Scope of Work").

²¹² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 36; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 77; **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006.

²¹³ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, Section 13.2 (pp. 46-47).

feasibility study that elaborates on (among other information) the project's necessity, content and scope, investment estimate, and techno-economic analysis.²¹⁴ The Alutrint Feasibility Study did not appear to meet these requirements.

99.3 Alutrint therefore commissioned the feasibility study to be prepared by CMEC. CMEC in turn involved NEUI, which had considerable experience and the requisite expertise to prepare the study.²¹⁵

99.4 Adopting the high-level price breakdown proposed by Alutrint,²¹⁶ CMEC developed a more comprehensive investment estimate that arranged the high-level numbers into major components such as construction, equipment, installation, design, and management.²¹⁷ In April 2006, CMEC submitted its Feasibility Study for Alutrint's review, which included the investment estimate at section 15.3 (as further updated (see below), **CMEC Feasibility Study**).²¹⁸

99.5 On 2 August 2006, Mr Philip Julien of Alutrint wrote to Mr Xuejun Hong of CMEC, requesting the following adjustments to the CMEC Feasibility Study with a view to submission to GORTT and then the China EXIM Bank in the week of 7 August 2006:²¹⁹

"2. Please arrange for the Feasibility Study to be updated with the information that the Government of the Republic of Trinidad and Tobago will be DIRECTLY holding the majority shareholding for the

²¹⁴ **C-0534**, China EXIM Bank, "What basic information is needed for accepting projects and conducting preliminary assessments?", www.eximbank.gov.cn/services/infoserves/interflow/cjwt/201807/t20180705_4695.html (last accessed 16 October 2024).

²¹⁵ **C-0540**, Consolidated company profile of NEUI (last accessed 19 June 2024), p. 1 (Chinese); p. 1 (English) (NEUI's technical consultation and engineering services include, among others, the preparation of pre-feasibility study, feasibility study, and project application report).

²¹⁶ **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 22 (Chinese); pp. 20-21 (English).

²¹⁷ *Id.* pp. 235-246 (Chinese); pp. 306-324 (English).

²¹⁸ **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated). According to CMEC's records, the Chinese version in the exhibit was last updated in August 2006 (reflecting, among other changes, Alutrint's shareholder change from NEC to GORTT), and the English version in the exhibit is a slightly earlier version that was last updated in July 2006. This discrepancy is due to an internal file-keeping glitch. CMEC trusts that the State has archived the final submission version in both languages.

²¹⁹ **C-0093**, Email from P. Julien to X. Hong dated 2 August 2006.

Alutrint Project, and no longer the NEC. We can discuss upon my arrival, but I wanted to get the work started on the necessary update to the document.

3. We will shortly be sending you our required Salary rate for the Financial Model, as well as some other updates. We ask that you review and incorporate into your Financial Model expeditiously, as we want to present the final version of these models to GORTT early in the week of August 7, in order to maximise our chances of submitting the FStudy to the EXIM Bank later that week."

99.6 CMEC promptly performed the requested updates, including reflecting Alutrint's forthcoming shareholder change from NEC to GORTT.²²⁰ The investment estimate was found acceptable and required no further revisions. In August 2006, the updated CMEC Feasibility Study, after approval by GORTT, was submitted to the China EXIM Bank.²²¹

99.7 Much like the process of working the high-level numbers into a more detailed investment estimate, it was planned for CMEC to further develop the investment estimate into a "*full price breakdown for the Smelter, the upstream and downstream*" for inclusion as Annex 2 to the 2005 EPC Contract.²²² In particular, a more refined estimate for upstream and downstream facilities was anticipated as procurement progressed and further inputs became available.²²³ However, the full itemisation was overtaken by the price renegotiations resulting from schedule delays, scope changes, and other cost-related factors (discussed below).

²²⁰ **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 19 (Chinese). As explained in footnote 218, the English version in the exhibit is an earlier version last updated in July 2006, which therefore does not include the updates implemented in August 2006.

²²¹ This is recorded in **C-0098**, SINOMACH's Report to MOFCOM dated 25 August 2006, p. 6 (Chinese); p. 6 (English).

²²² **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 2 (Item 1(2)).

²²³ *Ibid.*

100. Additionally, as contemplated by the 2005 EPC Contract, Alutrint and CMEC executed and implemented a number of separate contracts to carry out pre-construction preparatory activities for the Project, including:
- 100.1 the Geotechnical Investigation Contract dated 29 May 2006;²²⁴
- 100.2 the Geotechnical Investigation Contract dated 23 April 2007;²²⁵ and
- 100.3 the Piling and Dynamic Compaction Test Contract dated 3 July 2007.²²⁶
101. These separate contracts have been fully settled (albeit after a significant delay until 2011),²²⁷ and do not form part of CMEC's claim in this arbitration.
102. Along with other conditions, the completion of geotechnical investigation²²⁸ and piling and dynamic compaction testing²²⁹ made way for the start of permanent construction.
103. On 16 May 2008, Alutrint and CMEC entered into Supplementary No. 1 to the 2005 EPC Contract,²³⁰ which included piling and dynamic compaction (**PDC**) within the scope of "Works" under the 2005 EPC Contract (**PDC Contract**).²³¹
104. The price, payment terms, technical specifications, and schedule for the PDC works are particularised in Annex 11 to the 2005 EPC Contract.²³² The total agreed price for the PDC works was US \$25,578,900, with US \$17,680,900 being allocated to piling, and

²²⁴ **C-0088**, Preliminary Geotechnical Investigation Contract between Alutrint and CMEC dated 29 May 2006.

²²⁵ **C-0125**, Detailed Geotechnical Investigation Contract between Alutrint and CMEC dated 23 April 2007.

²²⁶ **C-0131**, Piling and Dynamic Compaction Test Contract between Alutrint and CMEC dated 3 July 2007 (entered into on 17 July 2007).

²²⁷ See, e.g., **C-0270**, Letter from CMEC to Alutrint dated 16 February 2011 (CMEC chasing the last payment for geotechnical investigation services).

²²⁸ Geotechnical investigation was subcontracted to and completed by Golder Associates Inc. (**Golder**): **C-0090**, Geotechnical Investigation Data Report dated 15 June 2006; **C-0140**, Geotechnical Investigation Data Report dated 23 August 2007.

²²⁹ Piling and dynamic compaction testing was subcontracted to and completed by China Jikan Geotechnical Institute (**JKGI**): **C-0155**, Dynamic Compaction Test Report dated 25 July 2008; **C-0165**, Report of Bored Pile Load Test dated December 2008; **C-0240**, Supplementary Report of Piling Test dated 15 June 2010.

²³⁰ **C-0012**, PDC Contract (Supplementary No. 1 to 2005 EPC Contract) dated 16 May 2008.

²³¹ *Id.* p. 2 ("The said scope for piling and dynamic compaction shall be deemed [...] included in the meaning of 'Works' as defined in clause 1.1.5.8").

²³² *Id.* p. 2.

US \$7,898,000 to dynamic compaction.²³³ The PDC Contract price was additional to the 2005 EPC Contract price.

105. The PDC Contract forms an integral part of the 2005 EPC Contract. Except to the extent amended by the PDC Contract, the terms and conditions under the 2005 EPC Contract remain unchanged.²³⁴
106. On 19 January 2009, by an amendment, Alutrint and CMEC increased the price of the PDC works by US \$1,421,100, thus agreeing to a total PDC Contract price of US \$27 million.²³⁵

(b) Contract Terms

107. Turning to the contract terms, some relevant provisions (in addition to scope and price which have been addressed above) are reproduced or summarised below. The Claimant also adds comments where necessary.
108. **Conditions of Effectiveness.** The 2005 EPC Contract contains a number of conditions regarding when the contract shall enter into full force and effect:

"The provisions of Sub-Clause 14.2 (1) of the Conditions of Contract shall come into full force and effect upon the satisfaction of the provisions therein. The balance of the Contract shall come into full force and effect on the date when all of the following conditions are satisfied:

- (a) the signing of all the above mentioned Contract documents;*
- (b) the signing of the Financing Documents evidencing the Employer's financial arrangement with the China Exim Bank and satisfaction of all conditions precedent under them (other than the coming into force of this Contract Agreement);*
- (c) the issuance of Contractor's Performance Security;*
- (d) the payment by the Employer of the first two installments of the Advance Payments as provided in Sub-Clause 14.2;*
- (e) the Employer has obtained all approvals which it is obligated to obtain in*

²³³ *Id.* p. 5 (Annex 11, Part A, Clause 1).

²³⁴ *Id.* p. 4.

²³⁵ **C-0013**, Amendment to PDC Contract dated 19 January 2009, p. 1.

Trinidad and Tobago for the implementation of the Works including the Certificate of Environmental Clearance;

(f) the Contractor has obtained all the approvals it is obligated to obtain for the implementation of [t]he Works.

*(g) This Contract Agreement has been approved by the board of directors of both Parties and government of the Republic of Trinidad and Tobago and the People's Republic of China."*²³⁶

109. Sub-Clause 14.2(1) of the Conditions of Contract concerns the payment conditions of the first instalment of the Advance Payment in the amount of US \$6 million.²³⁷ After the specified conditions were satisfied,²³⁸ the US \$6 million mobilisation payment was made on 21 April 2006.²³⁹

110. It is because it was necessary for CMEC to begin mobilising in advance of full contractual effectiveness to ensure the expeditious execution of the EPC works once all conditions were met.

111. In reality, all contractual conditions of effectiveness were not fulfilled with respect to the 2005 EPC Contract (or the 2008 EPC Contract) prior to the termination of the Project. As will be discussed below, the crux that prevented this from happening was first the delayed issuance of CEC 1033/2005 and later its revocation by the High Court of Trinidad and Tobago. Despite good prospects in the restatement of CEC 1033/2005 through an appellate action and/or administrative re-application, the State decided to terminate the Project while those efforts were ongoing.

112. It bears noting that it is Alutrint (not CMEC) that is obligated to obtain all approvals

²³⁶ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 3.

²³⁷ *Id.* p. 78 (Conditions of Contract, Sub-Clause 14.2(1): The US \$6 million mobilisation fee shall be paid upon "approval by Employer's Board of Directors and the Finance Ministry of Trinidad & Tobago, against receipt of advance payment guarantee of US\$ 900,000.00 [...] and a letter of guarantee for 85% of the mobilization fee from the Contractor").

²³⁸ On 3 February 2006, Alutrint's board approved the US \$6 million mobilisation payment to CMEC: **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 15.

On 30 March 2006, CMEC issued a letter of guarantee to Alutrint in the amount of US \$5.1 million: **C-0083**, Letter of Guarantee from CMEC to Alutrint dated 30 March 2006.

On 14 April 2006, China Merchants Bank, as instructed by CMEC, issued an advance payment guarantee to Alutrint in the amount of US \$0.9 million: **C-0086**, Advance Payment Guarantee from China Merchants Bank to Alutrint dated 14 April 2006.

²³⁹ **C-0087**, Letter from Alutrint to First Citizens Bank dated 21 April 2006.

for the implementation of the works in Trinidad and Tobago, including the CECs,²⁴⁰ and is therefore responsible for any delay, impediment, or prevention caused by the lack of a valid CEC.

113. **"Commencement Date".** "Commencement Date" is a defined term that is tied to the date when the 2005 EPC Contract comes into full force and effect: it would be any day within 42 days thereafter, upon Alutrint giving seven days' prior notice.²⁴¹ This date then bears on the (a) commencement of Works and (b) completion of Works.

113.1 Commencement of Works – all Works (including design) only to commence after and not before the Commencement Date:

*"The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable **after the Commencement Date**, and shall then proceed with the Works with due expedition and without delay."*²⁴² (emphasis added)

113.2 Completion of Works / Time for Completion – within 28 months from the Commencement Date subject to extensions:

*"**Time for Completion** means the time for completing the Works under Sub-Clause 8.2 [Time for Completion], which shall be 28 months (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), **calculated from the Commencement Date**."*²⁴³ (latter emphasis added)

114. However, the parties have by conduct waived and/or varied and/or been estopped from relying on these provisions by reason of CMEC having carried out the works under the 2005 EPC Contract at the direction of, or pursuant to the instructions or permissions by, or the agreement with, Alutrint.

114.1 On one view, CMEC had started the design of the works from no later than June 2005 when it submitted the completed NEUI 300kA engineering proposal (see

²⁴⁰ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 3 (Contract Agreement, sub-paragraph (e)); p. 18 (Conditions of Contract, Sub-Clause 1.13(a)).

²⁴¹ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 54 (Conditions of Contract, Sub-Clause 8.1).

²⁴² *Id.* p. 54 (Conditions of Contract, Sub-Clause 8.1).

²⁴³ *Id.* p. 10 (Conditions of Contract, Sub-Clause 1.1.3.3).

paragraph 76 above). On this view, in or around September 2007, CMEC proposed formalising a project completion period calculated from June 2005.²⁴⁴

114.2 Even if pre-contract works were disregarded for this purpose, CMEC had been progressing the works, especially engineering design, shortly after the signing of the 2005 EPC Contract²⁴⁵ and throughout 2006 and 2007. By way of examples:

- (a) on 25 August 2006, Alutrint instructed CMEC to complete expeditiously a "*detailed layout revision*" to accommodate the proposed air emission standards and advise on "*any scheduling impact that this change may have*";²⁴⁶ and
- (b) in the meeting from 29 September to 2 October 2006 in Beijing, Alutrint decided to expand the smelter capacity from 125,000 to 250,000 mtpy (to be constructed in two phases, with the 125,000 mtpy smelter being Phase I) which again necessitated CMEC modifying the general layout. Alutrint confirmed the revision and acknowledged the resulting "[a]dditional cost and variation on the time of completion".²⁴⁷

114.3 Indeed, in reliance upon Alutrint's assurance of the grant of CEC 1033/2005 in October 2006²⁴⁸ (which already sustained a six-month delay from the original estimated approval date of April 2006²⁴⁹), CMEC had mobilised over 100 personnel for the Project by October 2006. Alutrint was fully aware of this.²⁵⁰

²⁴⁴ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 153.

²⁴⁵ See, e.g., **C-0080**, Minutes of meeting between Alutrint and CMEC on 25 January 2006 in Shenyang, China.

²⁴⁶ **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 2.

²⁴⁷ **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 5.

²⁴⁸ **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 2 ("*We feel confident that Alutrint will receive the CEC in October of this year.*").

²⁴⁹ **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 79 (estimated "CEC approval date": 30 April 2006). See also **C-0108**, Letter from CMEC to Alutrint dated 3 October 2006, p. 1.

²⁵⁰ **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 4 ("*up to date, over one hundred personnel have joined in CMEC's preparation for the Alutrint project*").

The execution on 2 October 2006 of two technical design agreements²⁵¹ and three sets of meeting minutes²⁵² were major milestones evidencing the progress of works during this period.

- 114.4 The mobilised personnel continued to carry out works for the Project well into 2007,²⁵³ and the momentum further increased after CEC 1033/2005 was actually granted on 2 April 2007.²⁵⁴
115. All of these (including discussions on the adjustment to the completion schedule caused by design changes) manifest that the parties must have understood the "Commencement Date" and the "Time of Completion" to have already started and have so conducted themselves.
116. Consequently, the parties have waived any unsatisfied conditions of effectiveness with respect to the works carried out and capable of being carried out; and the 2005 EPC Contract has become *partly* effective to that extent. This common understanding is also demonstrated by the wording in the subsequent 2008 EPC Contract, which provides that the 2005 EPC Contract would be "*render[ed] ineffective*" upon and only upon the 2008 EPC Contract coming into full force and effect.²⁵⁵
117. **Delays and Extensions.** CMEC as contractor is entitled to an extension of the "Time for Completion" if a delay to the completion of works arises from, among other causes:

²⁵¹ **C-0106**, Alutrint Aluminium Complex Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006; **C-0107**, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006.

²⁵² **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006); **C-0104**, Minutes of meeting between Alutrint and CMEC on 1 October 2006 in Beijing, China (signed 2 October 2006); **C-0105**, Revisions to the 19 August 2006 minutes of meeting between CMEC and Sural (signed 2 October 2006).

²⁵³ See, e.g., **C-0113**, Minutes of meeting between Alutrint, KTD, CMEC and THEIDI from 20 January 2007 to 21 January 2007; **C-0114**, Minutes of meeting between Alutrint, KTD, CMEC and NEUI from 11 January 2007 to 18 January 2007 in Shenyang, China (signed 23 January 2007); **C-0115**, Minutes of meeting between CMEC, Sural and Ceeco Bartell from 19 January 2007 to 23 January 2007 in Shenyang and Beijing, China; **C-0117**, Minutes of meeting between CMEC and Sural from 21 January 2007 to 26 January 2007 in Shenyang and Beijing, China.

²⁵⁴ See, e.g., **C-0123**, Minutes of meeting between Alutrint and CMEC on 17 April 2007 in Tunapuna, Trinidad and Tobago; **C-0124**, Minutes of meeting between Alutrint, CMEC and THEIDI from 17 April 2007 to 18 April 2007 in Tunapuna, Trinidad and Tobago; **C-0136**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 10 August 2007 in Beijing, China.

²⁵⁵ **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 2 (Contract Agreement, Clause 8).

(a) any delay, impediment or prevention caused by or attributable to Alutrint,²⁵⁶ (b) any variation of works,²⁵⁷ and/or (c) any suspension of works as instructed by Alutrint.²⁵⁸

118. All these causes were present in this case, leading to years of delay of the Project which, at the time of the signing of the 2005 EPC Contract, was expected to come into full production in April 2008.²⁵⁹

118.1 Alutrint was responsible for the delay, impediment or prevention caused by the absence of any requisite CEC, as well as the delayed and insufficient payment of the mobilisation fee (set out in Section E.5 below).

118.2 Alutrint initiated a significant number of variations – ranging from the seismic design parameter, power supply voltage, pot technology, engineering codes and standards, to general layout – which resulted in extended, extensive, and expensive designs and re-designs (set out in Section E.7(b) below).

118.3 Alutrint instructed two periods of suspension: a first suspension from June 2009 to March 2010 affecting part of the works, followed shortly by a second suspension from May 2010 to December 2011 affecting the whole of the works (set out in Sections E.8(a)-(b) below).

119. **Variation of Works**. Relatedly, insofar as variations are concerned, which refer to "*any change to the agreed Works in the Contract*",²⁶⁰ Alutrint may initiate any variations (other than an omission) at any time prior to the taking over of works. In such cases, CMEC is entitled to a price adjustment for accommodating each such variation.

*"Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others."*²⁶¹

²⁵⁶ C-0011, 2005 EPC Contract dated 20 December 2005, p. 56 (Conditions of Contract, Sub-Clause 8.4(c)).

²⁵⁷ *Id.* p. 56 (Conditions of Contract, Sub-Clause 8.4(a)).

²⁵⁸ *Id.* pp. 58-59 (Conditions of Contract, Sub-Clauses 8.8 to 8.9).

²⁵⁹ C-0077, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 79 (estimated "Last pot metal": 30 April 2008).

²⁶⁰ C-0011, 2005 EPC Contract dated 20 December 2005, p. 13 (Conditions of Contract, Sub-Clause 1.1.6.8).

²⁶¹ *Id.* pp. 73-74 (Conditions of Contract, Sub-Clause 13.1).

*"Unless otherwise stipulated in the Contract, upon instructing or approving a Variation, the Employer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine adjustments to the Contract Price and the payment method as stipulated in Clause 14. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 [Value Engineering] if applicable."*²⁶²

120. **Governing Law and Dispute Resolution.** The 2005 EPC Contract is governed by the laws of Trinidad and Tobago,²⁶³ and contains a dispute resolution mechanism escalating from amicable settlement to International Chamber of Commerce (ICC) arbitration seated in Switzerland (or another mutually agreed neutral place).²⁶⁴

E.4 The 2008 EPC Contract

(a) Contract Scope, Price, and Documents

121. On 30 May 2008, in response to the "Request for Proposal – Reduced Scope Alutrint Project" dated 19 May 2008,²⁶⁵ CMEC submitted its "Proposal for Smelter Section of Alutrint Aluminum Complex".²⁶⁶
122. In this proposal, CMEC made a new quotation of US \$465 million for a 125,000 mtpy aluminium smelter, which price excluded the anode plant but included the PDC works and a downstream cast house.²⁶⁷ The substantial increase from the US \$275 million quotation in the 23 March 2005 MOU was to account for factors such as inflation, currency fluctuations, scope changes, design adjustments, and technical specification revisions.²⁶⁸ This nonetheless remained a competitive price compared to similar smelters worldwide at the time.²⁶⁹
123. Further discussions and negotiations ensued in the following months. Pertinently,

²⁶² *Id.* p. 75 (Conditions of Contract, Sub-Clause 13.3).

²⁶³ *Id.* p. 12 (Conditions of Contract, Sub-Clause 1.1.6.2); p. 15 (Conditions of Contract, Sub-Clause 1.4).

²⁶⁴ *Id.* pp. 103-104 (Conditions of Contract, Sub-Clauses 20.5 to 20.6).

²⁶⁵ **C-0150**, Letter from Alutrint to CMEC dated 19 May 2008.

²⁶⁶ **C-0151**, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008.

²⁶⁷ *Id.* pp. 7, 14-15.

²⁶⁸ *Id.* pp. 10-12, 14-17.

²⁶⁹ *Id.* p. 13.

Professor Kenneth Julien, Chairman of NGETF, took the lead in this process.²⁷⁰

124. On 30 October 2008, Alutrint as employer and CMEC as contractor entered into a further EPC contract (**2008 EPC Contract**, together with the 2005 EPC Contract, **EPC Contracts**).²⁷¹
125. The scope of "Works" for the 2008 EPC Contract is limited to the aluminium smelter (without anode plant), namely the *"Engineering, Procurement and Construction (EPC) services on a lump sum turnkey basis for a 125,000 metric ton per year Aluminum Smelter to be located at Union Estate La Brea, Trinidad and Tobago"*.²⁷²
126. The contract price for these "Works" was a lump sum US \$414 million (**subject to variations and adjustments**).²⁷³ Further, CMEC is explicitly entitled to 5% reasonable profit and 5% overhead **in addition to** the contract price, which together represent a 10% markup on costs.²⁷⁴ Similar to the 2005 EPC Contract, the 2008 contract price is exclusive of training of operating and maintenance staff, foundation treatment (i.e. PDC works), and a number of other items.²⁷⁵
127. Although a price break-down was included in the 2008 EPC Contract,²⁷⁶ as explained by Alutrint, *"this primarily captures the scope of works and establishes a basis for negotiating additions or deletions to the scope. As a result, there is no price breakdown in the Contract for, Engineering and Temporary Construction Facilities."*²⁷⁷
128. The upstream and downstream portions of the aluminium complex were omitted from the scope of CMEC's 2008 EPC Contract, for different reasons.

²⁷⁰ See, e.g., **C-0156**, Letter from NGETF to CMEC dated 7 August 2008.

²⁷¹ **C-0015**, 2008 EPC Contract dated 30 October 2008.

²⁷² *Id.* p. 1 (Contract Agreement, Whereas Clause (a)).

²⁷³ *Id.* p. 26 (Particular Conditions of Contract, Sub-Clause 14.1 including sub-paragraph (a)).

²⁷⁴ *Id.* p. 10 (Particular Conditions of Contract, Sub-Clause 1.2).

²⁷⁵ *Id.* p. 26 (Particular Conditions of Contract, Sub-Clause 14.1).

²⁷⁶ *Id.* p. 28 (Particular Conditions of Contract, Sub-Clause 14.1).

²⁷⁷ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, pp. 7-8.

129. In respect of the upstream:

129.1 The exclusion involved contracting the works to other (non-Chinese) contractors, which violated the 2005 EPC Contract's requirements prohibiting the omission or termination of any works to be carried out by others.²⁷⁸

129.2 Although CMEC increased its estimate for the upstream portion from the initial US \$55 million to US \$137 million in September 2007,²⁷⁹ the capital cost at which the State later granted the works to other contractors was similar if not higher – the data revealed in the contemporaneous documents were as follows:

Project Split from CMEC Work Scope	Approximate Capital Cost
Alutrint Dock and Storage Yard	US \$40 million ²⁸⁰
Alutrint Material Storage and Handling Facilities	US \$100 million ²⁸¹
Conveyor System	TT \$170 million ²⁸² (c. US \$25 million)

129.3 Furthermore, even after the State decided to terminate the smelter to be constructed by CMEC, it directed the construction of the Alutrint Material Storage and Handling Facilities – (re-)contracted to US contractor GLF Construction Corporation²⁸³ – to proceed after certain scope revisions.²⁸⁴ The facilities were completed in late 2011 or early 2012 at a cost of US \$85.5 million.²⁸⁵

²⁷⁸ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 74 (Conditions of Contract, Sub-Clause 13.1); p. 84 (Conditions of Contract, Sub-Clause 15.5).

²⁷⁹ **C-0142**, Budgetary Quotation for Dock and Material Handling Facilities dated September 2007; **C-0144**, Breakdown of Budget Prices for Dock and Material Handling Facilities dated 31 October 2007.

²⁸⁰ **C-0171**, Letter from Alutrint to CMEC dated 27 February 2009, p. 1.

²⁸¹ *Ibid.*

²⁸² **C-0575**, State Enterprises Investment Programme 2012, dated 10 October 2011, p. 17.

²⁸³ *Id.* p. 16.

²⁸⁴ *Id.* p. 17.

²⁸⁵ **C-0576**, State Enterprises Investment Programme 2013, dated 1 October 2012, p. 50.

129.4 These are works that CMEC was contractually entitled to carry out and earn a profit thereon.

130. In respect of the downstream:

130.1 The exclusion was a temporary expedient due to the fact that the downstream configuration was still being adjusted at the time of the 2008 EPC Contract,²⁸⁶ after Sural, the original downstream nominated subcontractor, disengaged from the Project.

130.2 However, as committed by the State, "*as a default, there is an option for CMEC to provide a casthouse (50% SOW, 50% ingot) for \$24M USD*",²⁸⁷ as was quoted by CMEC in the 30 May 2008 proposal.²⁸⁸

130.3 In reliance upon this commitment and on the expectation of a separate cast house contract being executed in due course, CMEC carried out works for this reconfigured downstream facility up to the preliminary engineering stage.²⁸⁹

130.4 On 24 April 2009, CEMC completed and submitted the Proposal of Cast House²⁹⁰ as well as a renewed quotation of US \$31.23 million.²⁹¹ However, the anticipated cast house contract did not materialise.

131. Like the 2005 EPC Contract, the 2008 EPC Contract consists of multiple documents mutually explanatory of each other. For the purposes of interpretation, they are in the following order of priority:²⁹²

131.1 the Contract Agreement;²⁹³

²⁸⁶ **C-0167**, Letter from MOF to China EXIM Bank (with attachment) dated 8 January 2009, p. 5.

²⁸⁷ *Ibid.*

²⁸⁸ **C-0151**, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008, pp. 14-15.

²⁸⁹ **C-0173**, Letter from CMEC to Alutrint (with attachment) dated 19 March 2009.

²⁹⁰ **C-0180**, Proposal of Cast House for Alutrint Smelter Project dated 24 April 2009.

²⁹¹ **C-0181**, Quotation of Cast House dated 24 April 2009.

²⁹² **C-0015**, 2008 EPC Contract dated 30 October 2008, pp. 1-2 (Contract Agreement, Clause 2); p. 11 (Particular Conditions of Contract, Sub-Clause 1.5).

²⁹³ *Id.* pp. 1-3.

- 131.2 the Particular Conditions of Contract (**PCC**);²⁹⁴
- 131.3 the General Conditions of Contract (**GCC**);²⁹⁵
- 131.4 the Employer's Requirements;²⁹⁶ and
- 131.5 the Tender²⁹⁷ and any other documents forming part of the 2008 EPC Contract, including the Memorandum of Understanding for Sub-contractors and Construction Workers (**Labour MOU**)²⁹⁸ and all relevant written communications as listed in the attachment to the Employer's Requirements.
132. The PCC and the GCC together constitute the Conditions of Contract for the 2008 EPC Contract.²⁹⁹ The PCC supplements the GCC, and prevails in the case of a conflict.³⁰⁰
133. The Employer's Requirements serve to specify "*the purpose, scope, and/or design and/or other technical criteria, for the Works*".³⁰¹ Section 8 of the Employer's Requirements contemplated a complete set of Technical Specifications to be concluded within one month of contract signing.³⁰² In addition, the Employer's Requirements set out a number of matters to be further discussed and agreed before the 2008 EPC Contract comes into full force and effect.³⁰³
134. The Tender refers to CMEC's "*signed offer for the Works*",³⁰⁴ which is understood to be CMEC's 30 May 2008 proposal.
135. The Labour MOU provides guidance for the conditions of employment and seeks to

²⁹⁴ *Id.* pp. 4-34.

²⁹⁵ *Id.* pp. 35-117.

²⁹⁶ **C-0160**, Employer's Requirements dated 30 October 2008.

²⁹⁷ **C-0151**, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008.

²⁹⁸ **C-0161**, Memorandum of Understanding for Sub-contractors and Construction Workers dated 30 October 2008.

²⁹⁹ **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 9 (Particular Conditions of Contract, Clause 1).

³⁰⁰ *Id.* p. 4.

³⁰¹ *Id.* p. 41 (General Conditions of Contract, Sub-Clause 1.1.1.3).

³⁰² **C-0160**, Employer's Requirements dated 30 October 2008, s. 8.

³⁰³ *Id.* ss. 4, 14, 17, 19.

³⁰⁴ **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 41 (General Conditions of Contract, Sub-Clause 1.1.1.4).

ensure safe working practices, healthy work environment, and worker satisfaction.³⁰⁵

136. As for the relevant written communications, the list was left to be compiled within three weeks of contract signing.³⁰⁶ Discussions however continued until around August 2009 without conclusion of a definitive list.³⁰⁷
137. On 16 January 2009, the finalised Technical Specifications for the 2008 EPC Contract were executed.³⁰⁸ Among other contents, it was explicitly agreed that the project design should apply Chinese design codes and standards except with respect to local standards on environmental protection and safety.³⁰⁹
138. On 17 December 2009, Alutrint and CMEC entered into the First Amendment to the 2008 EPC Contract (**17 December 2009 Amendment**),³¹⁰ by which the parties amended / reduced the entry-into-effect conditions³¹¹ in an attempt to bring the 2008 EPC Contract into full force and effect (discussed below). It also captured CMEC Engineering Services Limited (**CESL**), a subsidiary CMEC incorporated in Trinidad and Tobago on 3 April 2009,³¹² as within the definition of "Contractor".³¹³

(b) Contract Terms

139. The terms of the 2008 EPC Contract are broadly similar to those of the 2005 EPC Contract. In addition to scope and price, some relevant provisions and their similarities with and/or differences from the 2005 EPC Contract are addressed below.

³⁰⁵ **C-0161**, Memorandum of Understanding for Sub-contractors and Construction Workers dated 30 October 2008, p. 6.

³⁰⁶ **C-0160**, Employer's Requirements dated 30 October 2008, s. 20.

³⁰⁷ **C-0203**, Letter from Alutrint to CMEC dated 14 August 2009, p. 4.

³⁰⁸ **C-0168**, Technical Specifications dated 16 January 2009.

³⁰⁹ *Id.* pp. 111-112.

³¹⁰ **C-0016**, First Amendment to 2008 EPC Contract dated 17 December 2009.

³¹¹ *Id.* Clauses 1-2.

³¹² **C-0177**, Certificate of Incorporation of CESL dated 3 April 2009.

³¹³ **C-0016**, First Amendment to 2008 EPC Contract dated 17 December 2009, Clause 3.

140. **Conditions of Effectiveness.** Similar to the 2005 EPC Contract, the 2008 EPC Contract contains a number of customary conditions regarding when the contract shall enter into full force and effect:

"The Contract shall come into full force and effect when the Employer and the Contractor have satisfied the following conditions:

6.1 All pre-construction approvals have been obtained in Trinidad and Tobago for the implementation of the Project. This includes contract approval by the Government of the Republic of Trinidad and Tobago.

6.2 All the approvals have been obtained in China for the implementation of this Project.

6.3 The Contractor has provided the Advance Payment Guarantee.

~~*6.4 The Employer has paid the full Advance Payment to the Contractor.*~~ [Deleted by the 17 December 2009 Amendment]

*6.5 Financing arrangements for the Project from China EXIM Bank have been secured."*³¹⁴

141. Clause 6.4 was deleted by the 17 December 2009 Amendment because the remainder of the Advance Payment could be financed through the disbursement of funds from the China EXIM Bank. Therefore, it was moved from being a condition of effectiveness to a condition that is linked to the Commencement Date (discussed below).
142. Again, the crux that prevented the 2008 EPC Contract from coming into full force and effect is events relating to the CEC. When the 2008 EPC Contract was signed, CEC 1033/2005 was in place³¹⁵ and preparations for the remaining conditions were progressing orderly. Only a small few formalities were left when the Government Concessional Loan Agreement was signed on 19 May 2009,³¹⁶ but the local court's decision to quash the CEC on 16 June 2009³¹⁷ unexpectedly impeded the start of permanent construction and the fulfilment of Clause 6.1.

³¹⁴ **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 2 (Contract Agreement, Clause 6); **C-0016**, First Amendment to 2008 EPC Contract dated 17 December 2009, Clause 1.

³¹⁵ CEC 1033/2005 was issued on 2 April 2007: **C-0017**, CEC 1033/2005 dated 2 April 2007.

³¹⁶ **C-0182**, Government Concessional Loan Agreement dated 19 May 2009.

³¹⁷ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007.

143. Same as the 2005 EPC Contract, it is Alutrint, not CMEC, that is obligated to obtain all CECs (along with other permissions) for the implementation of the permanent works in Trinidad and Tobago,³¹⁸ and is therefore responsible for any delay, impediment, or prevention caused by the lack of a valid CEC.

144. **"Commencement Date"**. The definition of "Commencement Date" under the 2008 EPC Contract (as amended) is linked to certain specified events, and in any event no earlier than the date when the 2008 EPC Contract comes into full force and effect. The "Time for Completion" then runs from the "Commencement Date".

144.1 Commencement Date of Works:

Before the 17 December 2009 Amendment:

*"The Commencement Date of these Works shall be the 91st day after the commencement of piling and dynamic compaction works, or the date on which the Contract comes into full force and effect, whichever is later."*³¹⁹

After the 17 December 2009 Amendment:

*"The Commencement Date of these Works shall be the 30th day after the date on which the Contractor has received the full Advance Payment from the Employer."*³²⁰

144.2 Completion of Works / Time for Completion – within 28 months from the Commencement Date subject to extensions:

*"'Time for Completion' means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Particular Conditions (with any extension under Sub-Clause 8.4 [Execution of Time for Completion]), calculated from the Commencement Date."*³²¹

"The Works and any Sections shall be completed within 28 months from the

³¹⁸ C-0015, 2008 EPC Contract dated 30 October 2008, pp. 48-49 (General Conditions of Contract, Sub-Clause 1.13(a)); C-0160, Employer's Requirements dated 30 October 2008, s. 2.1.

³¹⁹ C-0015, 2008 EPC Contract dated 30 October 2008, p. 20 (Particular Conditions of Contract, Sub-Clause 8.1).

³²⁰ C-0016, First Amendment to 2008 EPC Contract dated 17 December 2009, Clause 2.

³²¹ C-0015, 2008 EPC Contract dated 30 October 2008, p. 42 (General Conditions of Contract, Sub-Clause 1.1.3.3).

Commencement Date."³²²

145. However, the parties have by conduct waived and/or varied and/or been estopped from relying on these provisions by reason of CMEC having carried out the works under the 2008 EPC Contract at the direction of, or pursuant to the instructions or permissions by, or the agreement with, Alutrint. By way of example:

145.1 On 7 August 2008, the State approved CMEC and Alutrint to "*proceed with full mobilization*"³²³ for the Phase I 125,000 mtpy smelter.

145.2 On 26 September 2008, Alutrint accepted the upgraded NEUI 330kA cell design for the smelter and instructed CMEC to "*start the engineering work related to this decision as soon as possible*".³²⁴

145.3 Subsequently, after the 2008 EPC Contract was signed on 30 October 2008 and during 2009 to 2010, Alutrint (together with or through their consultants) reviewed, commented on, and approved CMEC's completed preliminary and detailed engineering works based on the NEUI 330kA technology. These were all well documented in written correspondence³²⁵ and signed meeting minutes or memos.³²⁶

145.4 Many works other than the permanent construction (which was governed by the rescinded CEC 1033/2005), such as the qualification review of key equipment vendors, were also in progress during 2009 to 2010.³²⁷

146. Alternatively, in light of the factual circumstances leading to the conclusion of the 2008

³²² *Id.* p. 21 (Particular Conditions of Contract, Sub-Clause 8.2).

³²³ **C-0156**, Letter from NGETF to CMEC dated 7 August 2008.

³²⁴ **C-0159**, Letter from Alutrint to CMEC dated 26 September 2008.

³²⁵ *See, e.g.*, **C-0170**, Letter from Alutrint to CMEC (with attachment) dated 20 February 2009; **C-0174**, Letter from Alutrint to CMEC (with attachment) dated 24 March 2009 (Alutrint instructing CMEC to "*proceed with your detail[ed] drawings*"); **C-0249**, Letter from Alutrint to CMEC (with attachments) dated 22 July 2010.

³²⁶ *See, e.g.*, **C-0178**, Minutes of meeting between Alutrint, CMEC, CMIIC and NEUI from 13 April 2009 to 17 April 2009 in Shenyang, China; **C-0188**, Minutes of meeting between Alutrint and CMEC from 23 June 2009 to 1 July 2009 in Zhengzhou, China; **C-0217**, Memorandum on the Preliminary Design Review from 26 October 2009 to 22 November 2009 (signed 23 November 2009).

³²⁷ *See, e.g.*, **C-0215**, Minutes of meeting between Alutrint, CMEC, Votorantim and Hatch on 16 November 2009 in Zhengzhou, China; **C-0220**, Alutrint Qualification Report on CMEC Chinese Suppliers dated 29 January 2010; **C-0224**, Notes of meeting between Alutrint and CMEC on 5 March 2010 in Chaguanas, Trinidad and Tobago.

EPC Contract and the 17 December 2009 Amendment, the phrase "Commencement Date of these Works" in this context should be construed as the commencement date of permanent construction works.

147. Either way, the parties in so conducting themselves have waived any unsatisfied conditions of effectiveness with respect to the works carried out and capable of being carried out; and the 2008 EPC Contract has become **partly** effective to that extent. This partial effectiveness is supported by the parties' actions and the ongoing works despite the lack of full contract effectiveness.

148. **Relationship between the EPC Contracts.** The Contract Agreement of the 2008 EPC Contract contains the following provisions that address its relationship with the 2005 EPC Contract (including the PDC Contract which forms part of the 2005 EPC Contract):

Clause 3: *"The Piling and Dynamic Compaction Agreement signed by Parties on May 16, 2008 shall be incorporated into this Contract as a Variation, upon Contract effectiveness."*³²⁸

Clause 6 sets out the conditions for the 2008 EPC Contract to come into full force and effect (reproduced in paragraph 140 above).

Clause 7: *"The Employer and Contractor shall promptly confirm with each other the date on which each of these conditions have been satisfied. Therefore, the Contract shall now come into full force and effect by notice from the Employer to the Contractor that all conditions listed in Item No.6 have been fulfilled."*³²⁹

Clause 8: *"The coming into force of this Agreement shall render ineffective the Contract CMEC-TD-HT-001 signed by Parties on the 20th day of December 2005."*³³⁰

149. It is clear that the 2008 EPC Contract only comes into full force and effect when *all* of the conditions listed in Clause 6 are fulfilled, and Clauses 3 and 8 only operate to respectively subsume the PDC Contract and cancel the 2005 EPC Contract upon such full contract effectiveness.

³²⁸ C-0015, 2008 EPC Contract dated 30 October 2008, p. 2 (Contract Agreement, Clause 3).

³²⁹ *Id.* p. 2 (Contract Agreement, Clause 7).

³³⁰ *Id.* p. 2 (Contract Agreement, Clause 8).

150. Indeed, as emphasised by Alutrint in its letter dated 21 November 2008:³³¹

"[O]n the matter of Piling and Dynamic Compaction Contract, both Alutrint and CMEC must note and be guided by the terms specified in the Contract Agreement signed on 30th October, 2008, namely paragraphs (3) and (8). The Piling and Dynamic Compaction Agreement signed on May 16, 2008, as a supplemental to the CMEC Contract TD-HT-001 of December 20, 2005 shall remain in effect until the EPC Contract signed on 30th October 2008 comes into full force and effect. At that time, the Piling and Dynamic Compaction works shall be subsumed as a variation under this new 30th October, 2008 EPC Contract as the previous principal Contract of December 20th 2005 shall be rendered ineffective."

151. Therefore, due to Alutrint's failure to secure all valid CECs as contemplated in Clause 6.1, the 2008 EPC Contract did not come into full force and effect and the 2005 EPC Contract remained alive. Both EPC Contracts were operational prior to them being terminated.

152. **Delay, Extension, and Variation**. These provisions are generally similar to those in the 2005 EPC Contract.

153. **Governing Law and Dispute Resolution**. The 2008 EPC Contract is governed by the laws of Trinidad and Tobago,³³² and contains a dispute resolution mechanism generally escalating from a Dispute Adjudication Board (**DAB**), to amicable settlement, to ICC arbitration seated in London.³³³

E.5 Delays and Cost Increases Through No Fault of CMEC

154. Prior to and at the time of the entry into the 2005 EPC Contract, the parties envisaged an almost immediate start of works leading up to the construction completion in April 2008. Preparations were being progressed on the basis of the following timeline:³³⁴

³³¹ **C-0163**, Letter from Alutrint to CMEC (with attachments) dated 21 November 2008.

³³² **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 11 (Particular Conditions of Contract, Sub-Clause 1.4).

³³³ *Id.* p. 33 (Particular Conditions of Contract, Sub-Clause 20.6); pp. 113-117 (General Conditions of Contract, Sub-Clauses 20.2 to 20.8).

³³⁴ **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 79.

Milestone Event	Date
CEC EIA submittal	31 January 2006
CEC approval	30 April 2006
Construction start	1 May 2006
First pot metal (i.e. start of production)	30 October 2007
Last pot metal (i.e. full production)	30 April 2008

155. In light of the importance of the CEC in the schedule of the Project, as noted above, the NEC made an early application for CEC 1033/2005 on 22 April 2005.³³⁵ Thereafter, good progress was achieved in the months before the signing of the 2005 EPC Contract:

155.1 the EMA issued the final Terms of Reference for the conduct of an EIA on 19 August 2005;³³⁶

155.2 Alutrint conducted a series of consultation meetings from 24 August to 14 November 2005, including two public consultation meetings respectively on 9 and 14 November 2005;³³⁷ and

155.3 Alutrint completed the qualitative risk assessment on 12 December 2005.³³⁸

156. All these efforts put Alutrint on a good track to complete a full EIA report by January 2006 (which it did as planned³³⁹). On this basis, an end-of-April CEC approval date was normally achievable³⁴⁰ and construction could have then commenced in mid-2006.

157. This was also why engineering works were frontloaded to even before the 2005 EPC Contract (see paragraphs 76, 79 and 81 above) – because the engineering phase needed

³³⁵ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, pars. 27.

³³⁶ **C-0067**, Final Terms of Reference for the Environmental Impact Assessment in respect of CEC 1033/2005, dated 19 August 2005.

³³⁷ **C-0068**, Key Stakeholder and Public Consultation Process, 24 August 2005 to 14 November 2005.

³³⁸ **C-0076**, Qualitative Risk Assessment Report for the Alutrint Aluminium Complex dated 12 December 2005.

³³⁹ **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006.

³⁴⁰ The EMA is statutorily required to determine a CEC application within 80 working days after the submission of the EIA report (unless, in exceptional circumstances, the EMA considers that it will be unable to make a determination within such statutory period): **CL-0020**, Certificate of Environmental Clearance Rules, 2001, rr. 6(1)(b), 6(2).

to be sufficiently advanced to address the technical aspects of imminent construction.

158. Indeed, the State stressed the importance of realising such timeline (including first metal production by October 2007) in light of the next Trinidad and Tobago general election in 2007.³⁴¹
159. However, as the events progressed, the EMA exercised "*meticulous care*"³⁴² in deciding whether to greenlight the construction of the Project which led to "*nearly two (2) years of the [CEC] application, evaluation and clarification process*"³⁴³ that resulted in "*extensive redesign and schedule delays*".³⁴⁴
160. Annex 7 sets out (among other events) some of the further requests and requirements raised by the EMA following its review of the EIA report and the further submissions and communications that ensued. To name a few instances:
- 160.1 on 29 May 2006, instead of granting approval, the EMA forwarded a Review and Assessment Report to NEC and informed NEC that the CEC application would not be determined unless the deficiencies identified in the aforesaid report were addressed;³⁴⁵
- 160.2 on 18 August 2006, NEC/Alutrint submitted a supplementary EIA report (which responded to the comments in the Review and Assessment Report). The EMA acknowledged receipt and indicated that it would be in a position to determine the CEC application by 17 October 2006;³⁴⁶ and

³⁴¹ See **C-0075**, Letter of Support from PRC Embassy to CCCME dated 8 November 2005, p. 1 (Chinese); p. 1 (English) ("*Currently, the Trinidad and Tobago side is imposing a very tight timeline, demanding a timely start and completion of construction. This is crucial for the present administration to secure victory in the 2007 Trinidad and Tobago general election. It is now important to ensure that works commence smoothly in the beginning of 2006.*").

³⁴² **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, p. 199 (para. 120).

³⁴³ **C-0120**, Letter from Alutrint to EMA (with attachment) dated 22 February 2007, p. 4.

³⁴⁴ *Id.* p. 2. Redesigns that occurred during and were warranted by the CEC application process are discussed in paragraphs 283-287 below.

³⁴⁵ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, p. 20 (para. 21).

³⁴⁶ *Id.* p. 22 (para. 31).

- 160.3 on 17 October 2006, the EMA, despite having previously committed to making a determination by this date, once again forwarded further comments and returned the application to NEC for further processing.³⁴⁷
161. In fact, the EMA granted CEC 1033/2005 to NEC only on 2 April 2007 (being for "[t]he Establishment of an Aluminium Smelter Complex with a target capacity of 125,000 metric tonnes per annum" at Union Industrial Estate, La Brea).³⁴⁸
162. This was one year later than the originally estimated approval date, and two years after the initial CEC application.
163. Notably, after the EMA's 2 April 2007 grant of CEC 1033/2005, on 29 June 2007 three public interest groups simultaneously filed applications before the High Court of Trinidad and Tobago for leave to apply for judicial review of the EMA's decision (with suit numbers CV 2007-02257, CV 2007-02263 and CV 2007-02272).³⁴⁹ Leave was granted on 13 September 2007;³⁵⁰ and the three actions were thereafter heard together³⁵¹ and concluded in June 2009³⁵² (discussed in Section E.8(a) below).
164. For present purposes, it suffices to point out that the CEC remained valid and the Project continued as normal while the judicial review application was pending in the local court – because, as observed by Ms Colleen Murray, Alutrint's Company Secretary,³⁵³ "*at this stage, there being no injunction in place, there was no reason for not continuing with the contractual Project and Alutrint progressed matters in the normal way.*"³⁵⁴
165. As Alutrint was acutely aware, the significant delay in the issuance of CEC 1033/2005 (which, as alluded to above, was for the purposes of the EPC Contracts caused by or

³⁴⁷ *Id.* p. 24 (paras. 39-40).

³⁴⁸ **C-0017**, CEC 1033/2005 dated 2 April 2007.

³⁴⁹ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, pp. 4-5 (paras. 1, 6); **C-0019**, *Harris Maxime and Ors v EMA and Ors* Dean-Armorer J. (2009.08.07) H.C.2272/2007, p. 3 (para. 1), p. 4 ("Procedural History" paragraph).

³⁵⁰ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, p. 5 (para. 7).

³⁵¹ *Id.* p. 6 (para. 10).

³⁵² *Id.* p. 200 ("Orders").

³⁵³ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 3.

³⁵⁴ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 158(3).

attributable to Alutrint as the party responsible for obtaining CEC approvals) had profound ripple effects on the overall schedule and budget of the Project.³⁵⁵

166. Importantly, CMEC as contractor prepared for the performance of works initially based on the estimated April 2006 CEC approval date, and subsequently in reliance upon Alutrint's renewed assurance in August 2006 that "[w]e *feel confident that Alutrint will receive the CEC in October of this year*".³⁵⁶ As mentioned in paragraph 114.3 above, CMEC had mobilised over 100 personnel for the Project and made substantial progress with preliminary engineering by October 2006.
167. To fund some of the upfront costs and in keeping with the project schedule, CMEC requested the first US \$6 million mobilisation fee in late March 2006, and the second US \$20 million mobilisation fee in early October 2006. As an overview, the table below summarises the status of all mobilisation payment requests in the Project.

³⁵⁵ **C-0120**, Letter from Alutrint to EMA (with attachment) dated 22 February 2007, p. 4 (by this letter, Alutrint urged the EMA to make an informed and expeditious decision on the Project noting that "*our project schedule and budget [were] already compromised*").

³⁵⁶ **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 2.

Mobilisation fee requested	Date requested by CMEC	Date approved by Alutrint	Amount paid by Alutrint	Date Alutrint made payment
US \$6 million	31 March 2006 ³⁵⁷	3 February 2006 ³⁵⁸	US \$6 million	21 April 2006 ³⁵⁹
US \$20 million	3 October 2006 ³⁶⁰	26 April 2007 ³⁶¹	US \$12 million ³⁶²	3 August 2007 ³⁶³
US \$16 million	20 February 2009 ³⁶⁴	3 June 2009 ³⁶⁵	Unpaid ³⁶⁶	/
US \$5 million	11 May 2010 ³⁶⁷	11 May 2010 ³⁶⁸	US \$5 million ³⁶⁹	12 May 2010 ³⁷⁰

168. In requesting the additional US \$20 million mobilisation fee on 3 October 2006, CMEC made clear that the request arose due to the delay in receiving the CEC (i.e. its receipt

³⁵⁷ **C-0084**, Invoice No. 26T10341208 (request of US \$6 million mobilisation fee), dated 31 March 2006.

³⁵⁸ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 15.

³⁵⁹ **C-0132**, Letter from Alutrint to First Citizens Bank dated 21 April 2006.

³⁶⁰ **C-0108**, Letter from CMEC to Alutrint dated 3 October 2006.

³⁶¹ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 29-31; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 84 (on 26 April 2007, Alutrint's Board approved the US \$20 million mobilisation payment to CMEC subject to the finalisation and signing of the Unanimous Shareholders' Agreement between GORTT and Sural Barbados).

After the Unanimous Shareholders' Agreement was signed on 3 July 2007, Alutrint proceeded to make an equity call of US \$20 million on 4 July 2007: **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 37; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 89.

³⁶² The US \$12 million paid to CMEC was from capital injection by GORTT on 30 July 2007 to meet its portion of the US \$20 million equity call: **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 90; **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 39.

³⁶³ **C-0132**, Letter from Alutrint to First Citizens Bank dated 3 August 2007.

³⁶⁴ **C-0170**, Letter from CMEC to Alutrint dated 20 February 2009.

³⁶⁵ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 170(4) ("*GORTT paid USD 16 million on 1 July 2009 to Alutrint to meet advance payment requirements of CMEC further to the Alutrint Board's consideration of the issue at their meeting on 3 June 2009*").

³⁶⁶ As noted in footnote 365 above, Alutrint made no payment to CMEC despite that GORTT had contributed US \$16 million specifically to meet CMEC's advance payment requirements. *See also* **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4 (showing the US \$16 million capital injection by GORTT in "2009/7").

³⁶⁷ **C-0231**, Invoice No. 201005TD001 (request of US \$5 million mobilisation fee), dated 11 May 2010.

³⁶⁸ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 56.

³⁶⁹ The US \$5 million was regarded as part payment of the previous US \$8 million shortfall (out of CMEC's US \$20 million mobilisation payment request in October 2006). Alutrint noted that "*there was still USD3 million owing from CMEC's [2006] request*": **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 56.

³⁷⁰ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 275(d). CMEC received the payment on 13 May 2010: **C-0634**, Credit Advice (receipt of US \$5 million mobilisation fee), 13 May 2010.

was six months beyond the anticipated receipt date) and the benefit to start setting up construction work before the 2007 rainy season,³⁷¹ as well as to mitigate the price escalation.³⁷²

169. Despite an immediate recommendation by a Board paper that Alutrint "*source and mobilize USD \$20M in October 2006*"³⁷³ and then a further request by Mr Philip Julien on 17 November 2006 that Alutrint "*approve the USD20 million for a November disbursement to CMEC*",³⁷⁴ and notwithstanding the Board members' acknowledgement that a deferred mobilisation "*would delay the project by three to six months*",³⁷⁵ or their appreciation of the "*capital cost benefit*" of an early mobilisation fee (being that "*it would reduce future price escalation and also allow CMEC to make up on lost time*"),³⁷⁶ the Board decided:

169.1 on 11 October 2006 to defer the payment of the mobilisation fee to CMEC until after the grant of the CEC;³⁷⁷ and

169.2 on 26 April 2007 (after the CEC was granted on 2 April 2007) to further defer the payment of the mobilisation fee to CMEC until after the signing of the Unanimous Shareholders' Agreement.³⁷⁸

170. Despite the signing of the Unanimous Shareholders' Agreement on 3 July 2007, Sural defaulted on its US \$8 million portion of the US \$20 million capital call and decided to

³⁷¹ **C-0108**, Letter from CMEC to Alutrint dated 3 October 2006 (preparatory activities included the construction of temporary facilities, procurement of machinery and tools, materials, and plant equipment, dispatch of workers, and transportation of the first shipment). In Trinidad and Tobago, the dry season typically runs from January to May, and the rainy season usually spans from June to December.

³⁷² **C-0108**, Letter from CMEC to Alutrint dated 3 October 2006, p. 1 ("*Procurement and down payment in order to try to hold prices of process equipment and materials for the first order*").

³⁷³ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 20.

³⁷⁴ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 55.

³⁷⁵ *Id.* para. 54.

³⁷⁶ *Id.* para. 65.

³⁷⁷ *Id.* para. 54 ("*once a CEC is approved, the Board will support the recommendations of the Board Paper*").

³⁷⁸ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, paras. 59-60; **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 29-31.

disengage from the Project.³⁷⁹

171. As a consequence of these events, CMEC received only a US \$12 million mobilisation payment in August 2007,³⁸⁰ 10 months after its initial request of US \$20 million in October 2006.
172. Notably, CMEC reiterated the payment request several times during this period in a good faith attempt to hold down the contract price amid the schedule delay.³⁸¹ In or around early March 2007, CMEC also explored the possibility of suspending the Project to mitigate delay costs, only to be told to press on as "*the CEC grant and the Shareholders Agreement [were] imminent*".³⁸²
173. All these factors together, including
- 173.1 the delayed issuance of CEC 1033/2055;
 - 173.2 the delayed and insufficient payment of the mobilisation fee;
 - 173.3 the design adjustments and scope changes during the delay (detailed in Section E.7(b) below);
 - 173.4 the inflation during the delay; and
 - 173.5 the currency fluctuations during the delay,
- led to an inevitable increase in the cost of executing the EPC works and therefore the price renegotiations since August 2007.³⁸³

³⁷⁹ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, paras. 94-96.

³⁸⁰ **C-0132**, Letter from Alutrint to First Citizens Bank dated 3 August 2007.

³⁸¹ **C-0123**, Minutes of meeting between Alutrint and CMEC on 17 April 2007 in Tunapuna, Trinidad and Tobago, items 5, 11 (CMEC reiterating the US \$20 million request in the first coordination meeting between Alutrint and CMEC after the CEC approval); **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 130 ("*on 20 April 2007, CMEC repeated its earlier request for a mobilization payment of USD 20 million to make payments and thereby hold down contract prices notwithstanding the delay*"); **C-0128**, Invoice No. 27T10401557 (request of US \$20 million mobilisation fee), dated 10 May 2007.

³⁸² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, paras. 57-58.

³⁸³ **C-0139**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 15 August 2007 in Beijing, China, paras. 2, 6, 7, 9; **C-0141**, Letter from CMEC to Alutrint (with attachments) dated 27 August 2007.

174. The renegotiations, which were shortly taken over by NGETF on behalf of GORTT in December 2007,³⁸⁴ lasted for over a year. On 7 August 2008, NGETF informed CMEC that GORTT had authorised Alutrint to negotiate the revised EPC Contract with CMEC and that "[w]ith this approval CMEC and Alutrint **can now proceed with full mobilization for the Phase I Project**" (emphasis added).³⁸⁵ The 2008 EPC Contract was subsequently signed on 30 October 2008.

175. The comparison table below illustrates the evolution of prices:

	2005 EPC CONTRACT PRICE (DECEMBER 2005)	END-OF-2007 PRICE INCREASE (DECEMBER 2007)	2008 EPC CONTRACT PRICE (OCTOBER 2008)
Smelter	US \$275 million ³⁸⁶	+ US \$82 million ⇒ US \$357 million ³⁸⁷	US \$414 million ³⁸⁸ (plus 5% overhead and 5% profit) ³⁸⁹
Upstream	US \$55 million ³⁹⁰	+ US \$82 million ⇒ US \$137 million ³⁹¹	<i>Omitted</i>
Downstream	US \$135 million ³⁹²	+ US \$19 million ⇒ US \$154 million ³⁹³	<i>Omitted</i> (with a default US \$24 million option) ³⁹⁴

³⁸⁴ **C-0146**, Letter from NGETF to CMEC dated 20 December 2007.

³⁸⁵ **C-0156**, Letter from NGETF to CMEC dated 7 August 2008.

³⁸⁶ **C-0006**, Memorandum of Understanding dated 23 March 2005, para. 5; **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46; **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 22 (Chinese); pp. 20-21 (English).

³⁸⁷ **C-0146**, Letter from NGETF to CMEC dated 20 December 2007, p. 2.

³⁸⁸ **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 26 (Particular Conditions of Contract, Sub-Clause 14.1).

³⁸⁹ *Id.* p. 10 (Particular Conditions of Contract, Sub-Clause 1.2).

³⁹⁰ **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46; **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 22 (Chinese); pp. 20-21 (English).

³⁹¹ **C-0142**, Budgetary Quotation for Dock and Material Handling Facilities dated September 2007; **C-0144**, Breakdown of Budget Prices for Dock and Material Handling Facilities dated 31 October 2007.

³⁹² **C-0081**, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006, pp. 10, 46; **C-0085**, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 22 (Chinese); pp. 20-21 (English).

³⁹³ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 151.

³⁹⁴ **C-0167**, Letter from MOF to China EXIM Bank (with attachment) dated 8 January 2009, p. 5.

176. Neither the schedule delay nor the cost increase was through any fault of CMEC. Rather, CMEC sustained substantial prolongation costs as the Project had already, in the words of Professor Kenneth Julien (Chairman of NGETF), "*slipped some three years behind the original schedule*" as of the end of 2007.³⁹⁵ While full mobilisation was authorised in August 2008, as will be discussed below, the Project suffered from further delay and suspension after the quashing of CEC 1033/2005 in June 2009 and then the change of government in May 2010.
177. Lastly, it is worth pointing out that CMEC had done everything on its side to achieve the conditions that would enable the EPC Contracts to come into full force and effect.
178. In terms of Chinese approvals for CMEC to implement the Project, CMEC obtained the letter of consent from the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (**CCCME**) as early as 5 January 2006 (which followed a prior approval from MOFCOM to CCCME).³⁹⁶
179. In terms of the Project financing arrangement, albeit not obligated to, CMEC assisted and facilitated the loan application process with the China EXIM Bank wherever possible. Indeed, CMEC was recognised as being "*integral in enabling the project financing from the EXIM Bank of China*".³⁹⁷
180. Further, the US \$400 million in financing was in place:
- 180.1 the China EXIM Bank granted a US \$300 million Buyer's Credit Loan to GORTT on 25 June 2008;³⁹⁸ and
- 180.2 the China EXIM Bank granted a RMB ¥800 million (approximately US \$100 million) Government Concessional Loan to GORTT on 19 May 2009.³⁹⁹

³⁹⁵ **C-0147**, Letter from NGETF to CMEC dated 24 December 2007.

³⁹⁶ **C-0078**, Letter of Consent from CCCME to CMEC dated 5 January 2006.

³⁹⁷ **C-0300**, Exit Report from Alutrint Acting CEO Philip Julien as of 30 October 2011, p. 3 (under s. 4(b)(ii)).

³⁹⁸ **C-0154**, Buyer Credit Loan Agreement dated 25 June 2008.

³⁹⁹ **C-0182**, Government Concessional Loan Agreement dated 19 May 2009.

181. Moreover, CMEC was ready to execute the Insurance Premium Agreement with the China Export & Credit Insurance Corporation (**Sinosure**)⁴⁰⁰ after which Sinosure would issue the Export Credit Insurance Policy to meet the condition precedent to the disbursement of the Buyer's Credit Loan.⁴⁰¹ However, the MOF instructed Alutrint to withhold the disbursement of the insurance premium pending "[t]he re-engagement of the environmental permit for the Alutrint Project".⁴⁰²
182. In terms of other formality requirements such as the issuance of the Advance Payment Guarantee and the Performance Security, CMEC prepared and submitted the draft forms for Alutrint's review and was ready to act on Alutrint's instruction.⁴⁰³

E.6 Sural Disengagement; Prior Proceedings Between Sural and GORTT

183. Unlike CMEC, Sural quickly walked away in the face of delay and cost escalations.
184. Sural's disengagement happened in the second half of 2007.
185. On 3 July 2007, GORTT and Sural (through Sural Barbados) entered into the Unanimous Shareholders' Agreement, which served to define their relationship as shareholders "*in the management of, affairs and dealings with*" Alutrint.⁴⁰⁴
186. Pursuant to the Unanimous Shareholders' Agreement, Alutrint could issue equity calls on the shareholders from time to time by giving 45 days' prior written notice, in which event GORTT and Sural should each contribute cash in proportion to their 60:40 shareholding percentage.⁴⁰⁵
187. As for governance, likewise in proportion to such 60:40 shareholding percentage:

⁴⁰⁰ **C-0197**, Letter from CMEC to Alutrint dated 22 July 2009 ("*the conditions for Sinosure to issue the Insurance Policy and to sign the Premium Payment Agreement with CMEC have already be[en] satisfied*"); **C-0200**, Letter from Alutrint to CMEC (with attachment) dated 30 July 2009, p. 1 ("*Alutrint acknowledges CMEC's readiness to execute the Insurance Premium Agreement with SINOSURE*").

⁴⁰¹ **C-0154**, Buyer Credit Loan Agreement dated 25 June 2008, Article 3.1(4).

⁴⁰² **C-0200**, Letter from Alutrint to CMEC (with attachment) dated 30 July 2009.

⁴⁰³ **C-0549**, Form of Advance Payment Guarantee and Performance Security for 2005 EPC Contract; **C-0550**, Form of Advance Payment Guarantee and Performance Security for 2008 EPC Contract.

⁴⁰⁴ **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Recital (G).

⁴⁰⁵ *Id.* Clauses 6.1.1-6.1.2; Recital (E).

- 187.1 GORTT was entitled to appoint up to 7 out of a maximum of 11 directors,⁴⁰⁶ including the right to appoint the Chairperson and the Deputy Chairperson;⁴⁰⁷ and
- 187.2 Sural was entitled to appoint up to 4 out of a maximum of 11 directors.⁴⁰⁸
188. In addition, Sural was entitled to nominate the Managing Director, a (non-directorship) management position.⁴⁰⁹ Mr Renda Butler, Executive Vice President of Sural and an experienced aluminium industry professional,⁴¹⁰ acted as the Managing Director of Alutrint since mid-2005.⁴¹¹
189. On 4 July 2007, Alutrint made a US \$20 million equity call to fund the US \$20 million mobilisation payment to CMEC⁴¹² (which, as mentioned above, had been requested by CMEC since 3 October 2006). Sural initially indicated that it would pay its 40% portion, i.e. US \$8 million.⁴¹³
190. From 6 to 15 August 2007, an Alutrint delegation led by Mr Renda Butler and Mr Philip Julien visited Beijing to hold discussions with CMEC on the outstanding commercial and technical issues of the Project.⁴¹⁴ CMEC took the opportunity of this occasion to initiate negotiations on the price increases, including reaching a preliminary agreement with Alutrint on a US \$60 million price increase for the smelter component of the Project to cover some inflationary costs and scope adjustments.⁴¹⁵

⁴⁰⁶ *Id.* Clause 9.2.1(a).

⁴⁰⁷ *Id.* Clause 9.1.1(i).

⁴⁰⁸ *Id.* Clause 9.2.1(b).

⁴⁰⁹ *Id.* Clause 9.1.1(ii)

⁴¹⁰ **C-0543**, LinkedIn Profile of Renda Butler, <https://www.linkedin.com/in/rendera-butler-ba559b6a> (last accessed 15 January 2024).

⁴¹¹ **C-0383**, ICC Case No. 18799/VRO/AGF/ZF, Hearing Transcripts, Volume 2, 8 September 2014, 155:2-3.

⁴¹² **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 37; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 89.

⁴¹³ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, paras. 91-92.

⁴¹⁴ **C-0139**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 15 August 2007 in Beijing, China; **C-0136**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 10 August 2007 in Beijing, China.

⁴¹⁵ **C-0139**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 15 August 2007 in Beijing, China, para. 2.

191. On 25 September 2007, Professor Kenneth Julien asked that Mr Renda Butler be removed from the position of Alutrint's Managing Director and instead work for Alutech Limited (**Alutech**).⁴¹⁶ Alutech is another 60:40 joint venture company between GORTT and Sural established to "*serve in a complementary capacity by utilising an allocation of aluminium produced by Alutrint Limited to create downstream aluminium products*", via a Technological Development Centre at Tamana Industrial Park, Trinidad and Tobago.⁴¹⁷
192. Effective 5 November 2007, Mr Renda Butler was discharged from any management responsibilities at Alutrint.⁴¹⁸ He was said to have been "*functionally replaced*" by Mr Philip Julien.⁴¹⁹
193. On 10 December 2007, the MOF served on Sural a notice of material breach of the Unanimous Shareholders' Agreement, citing Sural's failure to contribute its US \$8 million to meet the 4 July 2007 equity call.⁴²⁰
194. By letter dated 28 December 2007, Dr Alfredo Riviere of Sural wrote to Prime Minister Patick Manning proposing a separation between the smelter and downstream portions of the Project. Sural sought, among other matters, that (a) the Unanimous Shareholders' Agreement be "*suitably modified*" to remove Sural's obligations as a 40% shareholder such that GORTT be provided with 100% ownership of the smelter via Alutrint and Sural be repaid its equity investment in Alutrint, and that (b) a new 60/40 GORTT/Sural company be formed to build the downstream rod mill and wire and cable plant.⁴²¹
195. According to Mr Alfredo Riviere and Mr Renda Butler, Sural by this time had decided to "*seek disengagement from the smelter project*"⁴²² and "*divorce itself from capital responsibility for the smelter portion of the project*",⁴²³ considering the "[cost] overruns

⁴¹⁶ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.20.

⁴¹⁷ **C-0318**, Report on Alutech Limited for the Minister of Energy and Energy Affairs dated April 2012, p. 2.

⁴¹⁸ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.23; **C-0383**, ICC Case No. 18799/VRO/AGF/ZF, Hearing Transcripts, Volume 2, 8 September 2014, 155:2-3.

⁴¹⁹ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.24.

⁴²⁰ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 94.

⁴²¹ *Id.* paras. 96-97.

⁴²² *Id.* para. 96.

⁴²³ *Id.* para. 99.

*that were already occurring by the summer and fall of 2007", compounded by the fact that "GORTT removed Mr. Butler from his position as Alutrint's managing director".*⁴²⁴

196. As a result, Sural ceased funding Alutrint (Sural's last capital contribution being a small US \$1.5 million in September 2007⁴²⁵). GORTT alone funded all future capital calls of Alutrint (including US \$36.4 million in 2008 and US \$16 million in 2009),⁴²⁶ in total making available no less than 93% of Alutrint's actual equity funding.⁴²⁷
197. Relatedly, as "*Sural never had any intention of performing the Shareholders Agreement once it had decided to disengage at the end of 2007*",⁴²⁸ from 2008 onwards, the call for Alutrint Board meetings and the frequency of meetings held markedly decreased.⁴²⁹ Urgent and crucial matters were discussed instead in what was described as the "*Working Session*" of the "*local directors*" (i.e. GORTT directors based in Trinidad and Tobago);⁴³⁰ and Board meetings were convened to "*carry out instructions of the [Line] Ministry*" when necessary and possible.⁴³¹ Sural directors abstained from voting in the limited number of Board meetings⁴³² and formally exited Alutrint's Board on 28 June

⁴²⁴ *Id.* para. 99.

⁴²⁵ **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4.

⁴²⁶ **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4; **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, paras. 170-171 (under heading D.3.3 "*GORTT alone was financing Alutrint*").

⁴²⁷ **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4 (shareholders' contribution as at 31 October 2013); **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 5.

⁴²⁸ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 269.

⁴²⁹ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 50.

⁴³⁰ See, e.g., **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 53 (Alutrint convened "*a Director's Working Session for local directors*" at the Ministry of Finance, Port of Spain, on 18 June 2009 to discuss issues arising from the 16 June 2009 High Court decision to quash CEC 1033/2005); **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012 (Alutrint convened "*a Working Session of the local Board Members*" on 18 October 2011 to hear a presentation on the Project's status, compensation and separation plan, and company winding-up plan).

⁴³¹ See, e.g., **C-0315**, Minutes of Alutrint Board Meeting No. 2012-01 on 13 March 2012, p. 1 (the Chairperson welcomed the Board members by stating "[f]inally we have managed to have a Meeting of the Board here to carry out instructions of the Ministry").

⁴³² See, e.g., **C-0315**, Minutes of Alutrint Board Meeting No. 2012-01 on 13 March 2012, p. 5 (recording Sural directors' position to be that "*if the decision of the majority is to continue SURAL representative will remain present in the meeting but will abstain on every single point until there is clarification and fixing of the Shareholders issues*"); **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray

2012.⁴³³

198. Circling back on the events around the time of and following Sural's disengagement from the Project in December 2007:

198.1 on 17 December 2007, GORTT directors on Alutrint's Board made a presentation on the updated expenditure and schedule of the Project to the Prime Minister-chaired SCE to seek its approval.⁴³⁴ The SCE did not approve the increased expenditure but established a "Review Committee" chaired by Professor Kenneth Julien (Chairman, NGETF) and comprising Mr Frank Look Kin (President, NGC), Mr Andrew Jupiter (Vice President, NEC), Ms Alison Lewis (Permanent Secretary, MOF), and Mr Leroy Mayers (Permanent Secretary, MEEI) to examine the proposed increases with a view to their "*downward revision*";⁴³⁵

198.2 Professor Kenneth Julien therefore assumed the lead in the negotiations with CMEC. He wrote to CMEC on NGETF letterhead regarding the Project expenditure and schedule on 20 and 24 December 2007;⁴³⁶

198.3 on 21 February 2008, the Cabinet approved the severance of the smelter and downstream portions of the Project involving a renegotiated contract with CMEC at a substantially increased price of US \$516 million for just the smelter;⁴³⁷

198.4 on 15 May 2008, the Cabinet appointed a "Project Team" chaired by Professor Kenneth Julien and comprising Mr Andrew Jupiter, Ms Alison Lewis, and Mr

dated 17 January 2014, paras. 88-89 (recording that Sural directors continued to "*abstain[] from addressing any of the major items on the Agenda*" in Board Meeting No. 2012-02 on 5 June 2012).

⁴³³ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 90.

⁴³⁴ **C-0146**, Letter from NGETF to CMEC dated 20 December 2007, p. 1.

⁴³⁵ **C-0146**, Letter from NGETF to CMEC dated 20 December 2007, p. 2; **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 155. For more information about Professor Kenneth Julien, Frank Look Kin, Andrew Jupiter, Alison Lewis and Leroy Mayers, please respectively refer to Notes A3, E3, C4, C3 and A4 of Annex 3.

⁴³⁶ *See, e.g.*, **C-0146**, Letter from NGETF to CMEC dated 20 December 2007; **C-0147**, Letter from NGETF to CMEC dated 24 December 2007.

⁴³⁷ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 101.

Leroy Mayers to (a) prepare the request for a revised bid from CMEC and evaluate the tender from CMEC; as well as (b) develop a strategy for Sural's disengagement and prepare the request for proposals for potential new partnership and evaluate any responses.⁴³⁸ The Cabinet also authorised Alutrint to proceed with the PDC works and some other activities.⁴³⁹ These instructions were relayed by the MEEI to Alutrint on 9 June 2008;⁴⁴⁰

198.5 on 7 August 2008, Professor Kenneth Julien informed CMEC that GORTT had approved CMEC's proposal at the revised cost of US \$450 million and authorised Alutrint to negotiate the revised EPC Contract with CMEC – "*as soon as the Alutrint Management receives the formal decision from the Government, they will be in touch with you to finalize all outstanding matters relating to the Contract*";⁴⁴¹ and

198.6 on 6 October 2008, the Cabinet approved the 2008 EPC Contract.⁴⁴²

199. Notably, GORTT explained (indeed emphasised) that "[t]he matter of entering into a new CMEC contract was **not** put to the Alutrint Board for approval, reflecting Sural's disengagement from the contractual Project" (emphasis added).⁴⁴³ GORTT's position was that its decision to authorise Alutrint to enter into the 2008 EPC Contract without seeking Alutrint Board's approval amounted to an "*overt act*" accepting Sural's repudiatory breach of the Unanimous Shareholders' Agreement.⁴⁴⁴

200. The reality was therefore that the State gave direct instructions to Alutrint management on matters related to the Project and that management acted pursuant to the same. There had been no real Sural participation in the Project since the end of 2007.

⁴³⁸ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 174; **C-0153**, Letter from MEEI to Alutrint (with attachment) dated 9 June 2008, pp. 1, 3.

⁴³⁹ **C-0153**, Letter from MEEI to Alutrint (with attachment) dated 9 June 2008, p. 2.

⁴⁴⁰ **C-0153**, Letter from MEEI to Alutrint (with attachment) dated 9 June 2008.

⁴⁴¹ **C-0156**, Letter from NGETF to CMEC dated 7 August 2008.

⁴⁴² **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 117.

⁴⁴³ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 198.

⁴⁴⁴ *Id.* para. 312(3).

201. It appears that Sural, after its disengagement from the Project, engaged in efforts to explore potential restructured projects, including by submitting a joint proposal dated 7 June 2008 with Brazilian company Votorantim Metais Ltda. (**Votorantim**) in response to NEC's request for proposals for new partnership in the Alutrint Aluminium Complex.⁴⁴⁵
202. Subsequently, Votorantim engaged in further discussions with GORTT on its own and managed to conclude a Project Agreement dated 4 December 2009.⁴⁴⁶ The Project Agreement expired on 30 September 2010 due to the failure to enter into definitive documentation⁴⁴⁷ – simply put, "*nothing reached the stage of any binding commitment to a revised project*".⁴⁴⁸
203. Insofar as CMEC was concerned, the Project progressed as normal with the full support of (and renewed assurance from) the State. The State made clear that the status or result of the new shareholder talks would not affect the continuation of the Project – for example, Ms Alison Lewis, Permanent Secretary of the MOF, made the following representation in July 2009:
- "With respect to the issues of the changes in shareholding structure of Alutrint. I wish to advise that the Government is concluding discussions with a South American company with a view to having them become a possible shareholder. [...] Be advised that the Government of the Republic of Trinidad and Tobago will remain the Majority Shareholder of Alutrint. Furthermore, **the Ministry of Finance of the Republic of Trinidad and Tobago will ensure that 100% of the required equity injection will be provided to the Alutrint Project, independent to the progress of the aforementioned discussions, for the continuance of this important project.**"* (emphasis added)⁴⁴⁹
204. Although not revealed to CMEC at the time, Sural filed a Request for Arbitration against GORTT with the ICC International Court of Arbitration (**ICC Court**) on 2 July 2012.⁴⁵⁰ They since engaged in years of legal disputes concerning the Unanimous

⁴⁴⁵ **C-0152**, Letter from Votorantim and Sural to NEC dated 7 June 2008.

⁴⁴⁶ **C-0218**, Project Agreement between GORTT and Votorantim dated 4 December 2009.

⁴⁴⁷ *Id.* Clause 11(b).

⁴⁴⁸ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 262.

⁴⁴⁹ **C-0199**, Letter from MOF to Sinasure dated 29 July 2009.

⁴⁵⁰ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 10.

Shareholders' Agreement. In essence, Sural sought to have GORTT buy out its equity interest in Alutrint or pay damages for the cancellation of the Project.⁴⁵¹

205. The known proceedings between Sural and GORTT included the following:

205.1 ICC Court: ICC Case No. 18799/VRO/AGF/ZF;⁴⁵²

205.2 High Court of Justice of England and Wales: Claim No. CL-2015-000509;⁴⁵³

205.3 United States District Court, Southern District of Florida: S.D. Fla. Case No. 1:15-cv-22825-KMM;⁴⁵⁴ and

205.4 United States Court of Appeals for the Eleventh Circuit: 11th Cir. Case No. 16-15942.⁴⁵⁵

206. The end result was a confidential settlement agreement entered into on 20 June 2017 that settled four sets of then subsisting legal proceedings.⁴⁵⁶

207. Afterwards, GORTT worked with Sural to re-launch the Alutech project (i.e.

⁴⁵¹ In more detail:

- (a) as the primary claim, Sural sought to have GORTT buy out its equity interest in Alutrint based on an alleged variation of the Unanimous Shareholders' Agreement through an exchange of correspondence (**C-0014**, para. 209); or
- (b) as the alternative claim, Sural sought damages for GORTT's alleged repudiation of the Unanimous Shareholders' Agreement, which Sural claimed occurred with GORTT's September 2010 statement to cancel the Project (**C-0014**, para. 227).

The ICC tribunal found that:

- (a) as to Sural's primary claim, no enforceable agreement was reached for the sale of Sural's interest in Alutrint (**C-0014**, para. 224); and
- (b) as to Sural's alternative claim, Sural had repudiated the Unanimous Shareholders' Agreement by refusing to pay the 4 July 2007 equity call and seeking to disengage from the Project. GORTT accepted Sural's repudiatory breach when it announced the cancellation of the Project in September 2010 (**C-0014**, paras. 265-267).

⁴⁵² **C-0354**, ICC Case No. 18799/VRO/AGF/ZF, Terms of Reference dated 5 June 2013.

⁴⁵³ **C-0402**, Claim No. CL-2015-000509, Order of the High Court of Justice of England and Wales dated 14 July 2015.

⁴⁵⁴ **C-0517**, S.D. Fla. Case No. 1:15-cv-22825-KMM, Civil Docket (last accessed 2 July 2024).

⁴⁵⁵ **C-0518**, 11th Cir. Case No. 16-15942, General Docket (last accessed 2 July 2024).

⁴⁵⁶ **C-0441**, 11th Cir. Case No. 16-15942, Sural Barbado's Motion to Stay Appeal Pending Closing of Settlement, 25 July 2017, p. 4; **C-0448**, 11th Cir. Case No. 16-15942, Sural Barbados's 15 November 2017 Status Report, p. 4 (reporting the closing of the settlement).

production of downstream aluminium products) in October 2018.⁴⁵⁷

E.7 EPC Works Completed on the Project

(a) Overview

208. Prior to the abandonment of the Project by the State, CMEC had completed substantial works under the EPC Contracts. Most of these works were carried out from 2005 to 2010.
209. The Claimant provides in this section a non-exhaustive summary of the completed EPC works (including the PDC works). As noted below, most of them, including as to progress, were contemporaneously acknowledged and accepted by the State and/or Alutrint.
210. Indeed, Trinidad and Tobago's 2010-2011 Energy Minister Carolyn Seepersad-Bachan acknowledged that "*payments for work undertaken by CMEC [...] prior to the decision of Government*" were financial costs which "*had to be paid whether the Alutrint project was continued or terminated*", "*following due diligence to ascertain the value of these works*".⁴⁵⁸
211. For the avoidance of doubt, the costs incurred and claimed by CMEC in this arbitration also include costs related to services it provided for the Project dating from 2003 (when it began preliminary project consultation services) and continuing until 2014 (when it ceased site demobilisation activities), including costs arising from complying with Alutrint's instructions for suspension and termination (discussed in Section E.8 below).

Engineering (E)

212. The engineering and design phase in an aluminium smelter project is typically more

⁴⁵⁷ **C-0456**, Feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>, last accessed 1 June 2024); **C-0457**, Transcription of feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>); **C-0459**, P. Christopher, *The return of the Alutech plant*, Trinidad and Tobago Guardian, 3 October 2018.

⁴⁵⁸ **C-0257**, Trinidad and Tobago Hansard, 1 October 2010 (11th Sitting – 1st Session – 10th Republican Parliament), p. 7.

front-loaded compared to other industrial projects, so was the design in this Project. This is due to several factors:

212.1 complexity of design: aluminium smelters involve intricate processes such as electrolysis, which requires detailed and precise engineering (for precise integration of all systems and processes) to ensure efficiency and safety;

212.2 specialised equipment: aluminium smelters involve specialised, non-standard equipment such as potlines, anode baking furnaces, and gas treatment centres, which often need to be custom-manufactured according to bespoke equipment designs in light of each smelter's operational requirements and constraints; and

212.3 environmental and safety regulations: aluminium smelters need to comply with stringent environmental and safety regulations, which necessitate extensive upfront planning and design to meet those standards.

213. As detailed in Section E.7(b) below, what was unusual in this Project was how long and drawn-out the engineering had become due to the various design modifications initiated by Alutrint and the redesigns these had directly caused.

214. Leaving aside those complications for now (all of which need to be valued and added to the contract price), in the overall scheme of things, the percentage of completion for the smelter design was as follows:

Contract	Smelter Technology	Preliminary Design	Detailed Design
2005 EPC Contract	NEUI 300kA	100%	70%
2008 EPC Contract	NEUI 330kA	100%	80%

215. Alutrint accepted the preliminary design as fully completed.⁴⁵⁹ Indeed, Alutrint had reviewed and approved the preliminary design under both EPC Contracts contemporaneously.⁴⁶⁰ While Alutrint had assigned a percentage of "50%" to detailed

⁴⁵⁹ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, pp. 3, 9; **C-0601**, Draft Hatch Phase 1 Report, p. 1 ("According to Alutrint and as jointly signed off 23rd November 2009, the Preliminary Designs have been completed and supplied to Alutrint.").

⁴⁶⁰ **C-0114**, Minutes of meeting between Alutrint, KTD, CMEC and NEUI from 11 January 2007 to 18 January 2007 in Shenyang, China (signed 23 January 2007); **C-0217**, Memorandum on the Preliminary Design Review from 26 October 2009 to 22 November 2009 (signed 23 November 2009).

design in its January 2012 internal presentation⁴⁶¹ (which was before the design verification exercise in October 2013),⁴⁶² CMEC's position above is supported by the witness statement of the chief designer of the Project⁴⁶³ as well as the independent expert opinion of Mr Damian Connelly.⁴⁶⁴

216. Additionally, CMEC performed and delivered engineering works for the upstream and downstream facilities under the 2005 EPC Contract.
217. In respect of the upstream, assisted by NEUI⁴⁶⁵ and CCCC Third Harbor Consultants Co., Ltd.⁴⁶⁶ (**THEIDI / THCCCC**),⁴⁶⁷ CMEC completed 100% of the preliminary design.⁴⁶⁸ The completed works were evidenced by, among others, the technical design agreements,⁴⁶⁹ bill of quantities,⁴⁷⁰ and technical meeting minutes.⁴⁷¹
218. Notably, Alutrint was fully conscious of the unpaid fees for the upstream engineering services – in the October 2011 exit report of then outgoing Alutrint Acting CEO Mr Philip Julien, he wrote: *"There may be an unresolved issue concerning port engineering fees, for work purported to have been done by CMEC between 2005 and 2007 on the port design development. It is suggested however to wait for CMEC to raise this as an issue."*⁴⁷² Notwithstanding this statement, when CMEC did raise the upstream design as part of its design claim,⁴⁷³ no payment was made.

⁴⁶¹ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, pp. 3, 9.

⁴⁶² **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013.

⁴⁶³ Witness Statement of Qingchen Yang, paras. 29, 36.

⁴⁶⁴ Expert Report of Damian Connelly, Notes A4.1.3 and A4.1.6.

⁴⁶⁵ **C-0127**, Design Contract Supplement No. 1 between CMEC and NEUI dated 8 May 2007.

⁴⁶⁶ **C-0116**, Letter of Mandate from CMEC to THEIDI dated 25 January 2007.

⁴⁶⁷ THEIDI and THCCCC were used interchangeably in contemporaneous documents.

⁴⁶⁸ Witness Statement of Qingchi Wang, para. 23.

⁴⁶⁹ **C-0106**, Alutrint Aluminium Complex Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006; **C-0133**, Agreement of Dock and Material Handling Facilities for Alutrint Aluminium Complex dated 8 August 2007.

⁴⁷⁰ **C-0126**, THEIDI's Bill of Quantities dated May 2007.

⁴⁷¹ See, e.g., **C-0113**, Minutes of meeting between Alutrint, KTD, CMEC and THEIDI from 20 January 2007 to 21 January 2007; **C-0124**, Minutes of meeting between Alutrint, CMEC and THEIDI from 17 April 2007 to 18 April 2007 in Tunapuna, Trinidad and Tobago.

⁴⁷² **C-0300**, Exit Report from Alutrint Acting CEO Philip Julien as of 30 October 2011, p. 4 (under s. 4(b)(ii)).

⁴⁷³ **C-0347**, Letter from CMEC to Alutrint dated 22 April 2013, pp. 2-3.

219. In respect of the downstream, led by CMEC's in-house technical team and enlisting the assistance of NEUI as necessary,⁴⁷⁴ CMEC completed 23% of the preliminary design.⁴⁷⁵ The completed works were evidenced by, among others, the technical design agreement⁴⁷⁶ and technical meeting minutes.⁴⁷⁷
220. For completeness, CMEC also progressed with the preliminary design of a reconfigured cast house to serve the smelter under the 2008 EPC Contract. See paragraph 130 above.

Procurement (P)

221. The procurement in this Project involved sourcing and purchasing all necessary equipment, materials, and services.
222. In relation to the tendering and procurement of equipment for the permanent structure, CMEC completed the following activities:
- 222.1 in respect of the smelter, formulation of lists of key equipment and recommended vendors, preparation of relevant specifications for invitation to bid documents, coordination of site visits, qualification of key equipment vendors, and otherwise progressing the procurement process;⁴⁷⁸
- 222.2 in respect of the upstream, solicitation and evaluation of bidding offers for (i) ship unloader, (ii) storage silos, and (iii) pipe conveyor, which were among the

⁴⁷⁴ **C-0127**, Design Contract Supplement No. 1 between CMEC and NEUI dated 8 May 2007.

⁴⁷⁵ Witness Statement of Qingchi Wang, para. 24.

⁴⁷⁶ **C-0107**, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006.

⁴⁷⁷ See, e.g., **C-0080**, Minutes of meeting between Alutrint and CMEC on 25 January 2006 in Shenyang, China; **C-0095**, Minutes of meeting between CMEC and Sural from 14 August 2006 to 18 August 2006 in Puerto Ordaz, Venezuela (signed 19 August 2006); **C-0105**, Revisions to the 19 August 2006 minutes of meeting between CMEC and Sural (signed 2 October 2006); **C-0104**, Minutes of meeting between Alutrint and CMEC on 1 October 2006 in Beijing, China (signed 2 October 2006); **C-0115**, Minutes of meeting between CMEC, Sural and Ceeco Bartell from 19 January 2007 to 23 January 2007 in Shenyang and Beijing, China; **C-0117**, Minutes of meeting between CMEC and Sural from 21 January 2007 to 26 January 2007 in Shenyang and Beijing, China.

⁴⁷⁸ See, e.g., **C-0179**, Letter from Alutrint to CMEC dated 23 April 2009; **C-0215**, Minutes of meeting between Alutrint, CMEC, Votorantim and Hatch on 16 November 2009 in Zhengzhou, China; **C-0220**, Alutrint Qualification Report on CMEC Chinese Suppliers dated 29 January 2010; **C-0224**, Notes of meeting between Alutrint and CMEC on 5 March 2010 in Chaguanas, Trinidad and Tobago.

key equipment for the upstream port facilities;⁴⁷⁹ and

222.3 in respect of the downstream, assistance to Sural as necessary,⁴⁸⁰ Sural being Alutrint's nominated subcontractor to undertake procurement of downstream equipment.⁴⁸¹

223. Moreover, CMEC procured and delivered six shipments of construction equipment and materials to the Project site in Trinidad and Tobago:

223.1 first shipment departing China in March 2008;⁴⁸²

223.2 second shipment departing China in November 2008;⁴⁸³

223.3 third shipment departing China in June 2009;⁴⁸⁴

223.4 fourth shipment departing China in July 2009;⁴⁸⁵

223.5 fifth shipment departing China in July 2009;⁴⁸⁶ and

223.6 sixth shipment departing China in May 2010.⁴⁸⁷

224. As of mid-July 2010, the State acknowledged receipt of five shipments containing equipment and materials from China.⁴⁸⁸ The sixth shipment arrived in Port of Spain not

⁴⁷⁹ See, e.g., **C-0138**, Letter from CMEC to Alutrint (with attachments) dated 14 August 2007.

⁴⁸⁰ See, e.g., **C-0115**, Minutes of meeting between CMEC, Sural and Ceeco Bartell from 19 January 2007 to 23 January 2007 in Shenyang and Beijing, China.

⁴⁸¹ **C-0107**, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006, p. 2; **C-0104**, Minutes of meeting between Alutrint and CMEC on 1 October 2006 in Beijing, China (signed 2 October 2006), p. 1 ("Nomination of Subcontractor").

⁴⁸² **C-0589**, Shipment 1 supporting documents (consolidated), March 2008; **C-0148**, Letter from CMEC to Alutrint (with attachment) dated 28 February 2008.

⁴⁸³ **C-0590**, Shipment 2 supporting documents (consolidated), November 2008; **C-0164**, Letter from CMEC to Alutrint (with attachments) dated 28 November 2008.

⁴⁸⁴ **C-0591**, Shipment 3 supporting documents (consolidated), June 2009; **C-0190**, Letter from CMEC to Alutrint dated 5 July 2009.

⁴⁸⁵ **C-0592**, Shipment 4 supporting documents (consolidated), July 2009.

⁴⁸⁶ **C-0593**, Shipment 5 supporting documents (consolidated), July 2009.

⁴⁸⁷ **C-0594**, Shipment 6 supporting documents (consolidated), May 2010; **C-0238**, Letter from CMEC to Alutrint dated 7 June 2010.

⁴⁸⁸ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, p. 5.

long thereafter.⁴⁸⁹

225. As summarised by Alutrint, CMEC's delivered construction equipment and materials included the following:⁴⁹⁰

225.1 construction equipment: auger piling rigs, crawler cranes, excavators, bulldozers, dump trucks, rollers, wheel loaders, concrete mixer trucks, concrete pump truck, and forklifts; and

225.2 construction materials: coarse and fine aggregate, steel reinforcement, structural steel and prefabricated wall panels, etc.

Construction (C)

226. Although no permanent construction was yet commenced (due to CEC issues), CMEC had completed all the site preparation and temporary facilities. Alutrint accepted them as "100%" completed.⁴⁹¹

227. In more detail, the completed construction included:⁴⁹²

227.1 erection of a Temporary Work Camp (**TWC**);

227.2 erection of CMEC (contractor)'s and Alutrint (owner)'s site offices respectively;

227.3 construction of lay-out areas and temporary steel structures;

227.4 construction of temporary roads;

227.5 installation of temporary drains and sedimentation ponds;

227.6 construction of storm water outfall structures along the slopes of the Vessigny River;

⁴⁸⁹ **C-0238**, Letter from CMEC to Alutrint dated 7 June 2010 (the sixth shipment was estimated to arrive in Port of Spain on 15 July 2010, around the time the Cabinet Note was prepared).

⁴⁹⁰ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, pp. 11-12.

⁴⁹¹ *Id.* p. 3 ("*Site preparation & temporary facilities - 100%*").

⁴⁹² **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, p. 10. *See also* **C-0241**, Letter from CMEC to Alutrint (with attachment) dated 29 June 2010 (submission of bill of quantities for site completed facilities as of June 2010).

227.7 installation of a concrete batching facility; and

227.8 installation of temporary utilities (water and electricity).

228. In addition, in order to bring the site "*up to a standard that was acceptable for construction*"⁴⁹³ and as part of the PDC Contract, CMEC performed and substantially completed the ground improvement works by dynamic compaction and (later as a substitute method) excavation and backfilling.

228.1 Alutrint agreed and approved CMEC's use of the dynamic compaction method at a ground treatment seminar held on 1 April 2009.⁴⁹⁴ In accordance with this agreement, from 3 April 2009 to 11 June 2009, CMEC completed ground improvement over an area of 68,000 m² using the dynamic compaction method, with a total earthwork volume of approximately 340,000 m³.⁴⁹⁵

228.2 The dynamic compaction works on the construction site were suspended on 17 June 2009 pursuant to Alutrint's instruction following the High Court's decision to quash CEC 1033/2005.⁴⁹⁶

228.3 By letter dated 2 March 2010, with a view to enabling the resumption of further site activities under CEC 0394/2003 (the separate site preparation CEC which was not subject to challenge), Alutrint urged CMEC to consider using excavation and backfilling as the alternative ground improvement method.⁴⁹⁷ CMEC accordingly made proposals for excavation and backfilling and Alutrint formally approved the same on 29 March 2010.⁴⁹⁸

228.4 Excavation and backfilling were treated as CMEC's (substitute) performance of the dynamic compaction works under the PDC Contract, with the extra cost for

⁴⁹³ **C-0300**, Exit Report from Alutrint Acting CEO Philip Julien as of 30 October 2011, p. 5 (under s. 4(e)(i)).

⁴⁹⁴ **C-0175**, Minutes of meeting between Alutrint, Hatch, CMEC, CMIIC, NEUI and XAII on 1 April 2009 in Xi'an, China; **C-0176**, Letter from CMEC to Alutrint dated 2 April 2009 (in which CMEC summarised the agreements reached at the ground treatment seminar and notified Alutrint of the start of dynamic compaction on the site on 3 April 2009).

⁴⁹⁵ **C-0234**, Letter from CMEC to Alutrint dated 18 May 2010, p. 2.

⁴⁹⁶ **C-0022**, Email from P. Julien to J. Fu dated 16 June 2009 (with subsequent emails).

⁴⁹⁷ **C-0222**, Letter from Alutrint to CMEC (with attachment) dated 2 March 2010, p. 1.

⁴⁹⁸ **C-0227**, Letter from Alutrint to CMEC dated 29 March 2010, p. 1.

equipment rental being separately addressed via a variation / additional agreement.⁴⁹⁹

228.5 Therefore, starting from 1 April 2010, CMEC worked on an area of 22,000 m² using the excavation and backfilling method.⁵⁰⁰

228.6 By 13 June 2010, 81% of the ground improvement works (dynamic compaction and excavation and backfilling combined) had been completed and CMEC issued an invoice to claim the corresponding progress payment (excluding the 10% balance money) pursuant to the PDC Contract.⁵⁰¹ Alutrint acknowledged the progress and made the payment to CMEC in July 2010.⁵⁰²

229. Alutrint assigned "80%" as the percentage completed for dynamic compaction in its internal claim evaluation document.⁵⁰³ This seems to be the result of rounding down for presentation purposes; and in any event, a minimal 1% difference. As the Project was early terminated, the 10% balance money originally reserved from the payment to CMEC⁵⁰⁴ should be released and paid to CMEC to correspond to and fully compensate the 81% progress achieved.

230. As for the piling portion of the PDC Contract, while the piling construction (which fell under permanent construction subject to CEC 1033/2005) did not commence, CMEC had carried out piling design and procured relevant equipment and materials in preparation for the piling construction.⁵⁰⁵

231. CMEC managed and supervised the execution of all these EPC works with attendant overhead costs. Indeed, the management of the Project also fell within the scope of

⁴⁹⁹ **C-0227**, Letter from Alutrint to CMEC dated 29 March 2010, p. 2; **C-0228**, Letter from CMEC to Alutrint (with attachment) dated 31 March 2010; **C-0229**, Letter from Alutrint to CMEC dated 6 April 2010.

⁵⁰⁰ **C-0234**, Letter from CMEC to Alutrint dated 18 May 2010, p. 2.

⁵⁰¹ **C-0239**, Letter from CMEC to Alutrint (with attachments) dated 13 June 2010.

⁵⁰² **C-0615**, CMEC accounting record of receipt of US \$1,469,028 on 22 July 2010.

⁵⁰³ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, p. 3.

⁵⁰⁴ **C-0239**, Letter from CMEC to Alutrint (with attachments) dated 13 June 2010, p. 4 (10% of the dynamic compaction price was retained as the "balance payment").

⁵⁰⁵ **C-0235**, Letter from CMEC to Alutrint dated 26 May 2010. In this letter, CMEC requested a US \$3.18 million progress payment for piling works. The State acknowledged this as one of the "*actual valid claims*" submitted by CMEC by mid-July 2010: **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, pp. 5-6.

"Works" under the EPC Contracts as works necessary to satisfy or implied by the contract, and/or as works necessary for the stability, completion, or safe and proper operation, of other works.⁵⁰⁶

(b) Smelter Designs, Design Modifications, and Redesigns

232. The designs, design modifications, and resulting redesigns of the aluminium smelter comprise a major part of CMEC's completed (and uncompensated) works.
233. Unlike a typical EPC project, the engineering process in this Project continued from 2005 to 2010 – involving numerous variations instructed midway through the design – which was extended, extensive, and expensive.
234. Another notable feature of this Project is that a substantial portion of the designs and redesigns have been contemporaneously reviewed and approved by Alutrint and/or its consultants shortly after they were completed. Alutrint engaged a number of consultants in the design review, including:

Aluminium industry specialists

234.1 **KTD:** KPI Technology & Development, L.L.C.,⁵⁰⁷

234.2 **Hatch:** Hatch Ltd;⁵⁰⁸

234.3 **CMISC:** China Metallurgy Industry Service Company;⁵⁰⁹

Verification services provider

234.4 **ABS Consulting:** ABSG Consulting, Inc.,⁵¹⁰ and

⁵⁰⁶ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 27 (Conditions of Contract, Sub-Clause 4.1); **C-0015**, 2008 EPC Contract dated 30 October 2008, pp. 53-54 (General Conditions of Contract, Sub-Clause 4.1).

⁵⁰⁷ **C-0537**, Consolidated company profile of KTD (last accessed 24 June 2024).

⁵⁰⁸ **C-0536**, Consolidated company profile of Hatch (last accessed 24 June 2024).

⁵⁰⁹ CMISC is a Chinese company engaged by Alutrint to conduct basic engineering and equipment procurement review: **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, p. 5.

⁵¹⁰ **C-0538**, Company profile of ABS Consulting (last accessed 16 July 2024).

Geotechnical services provider

234.5 **Golder:** Golder Associates Inc.⁵¹¹

235. Moreover, after the termination of the Project, Alutrint engaged Hatch to conduct a "'bottom-up' assessment",⁵¹² or alternatively described as a "verification exercise", of all the engineering works completed for the Project.⁵¹³ This assessment took place in China in October 2013.⁵¹⁴ At the conclusion of the week-long review, Hatch and NEUI signed a memorandum titled "*Contents of Design & Services*" on 16 October 2013, which recorded the scope of Hatch's review (including the designs and redesigns performed since mid-2005).⁵¹⁵ CMEC understands that Hatch submitted an evaluation report of CMEC's engineering claim to GORTT shortly thereafter.⁵¹⁶
236. Without limiting the full scope of CMEC's engineering deliverables, the Claimant sets out below the major design modifications and related circumstances.

Seismic Design Parameter: PGA 0.15g to PGA 0.3g

237. On 8 August 2006, Alutrint, Golder, CMEC, and CMEC's subcontractors met to discuss the seismic design parameter and the foundation design in the Project.⁵¹⁷ NEUI stated that the Chinese Code for Seismic Design of Buildings (GB 50011-2001)⁵¹⁸ was adopted for the seismic design of the Project and that its design to date was based on a value of peak ground acceleration (**PGA**) of 0.15g determined from the initially

⁵¹¹ **C-0539**, Company profile of Golder (last accessed 25 October 2024).

⁵¹² **C-0601**, Draft Hatch Phase 1 Report, p. 2.

⁵¹³ **C-0355**, Letter from Alutrint to CMEC dated 25 June 2013.

⁵¹⁴ **C-0361**, Letter from Alutrint to CMEC dated 2 October 2013.

⁵¹⁵ **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013.

⁵¹⁶ After the PNM's election win in September 2015, CMEC also reminded the new PNM administration of the existence of this Hatch report: **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015, pp. 1-2; **C-0404**, Letter from CMEC to Finance Minister C. Imbert dated 24 September 2015, p. 2; **C-0405**, Letter from CMEC to Energy Minister N. Olivier dated 24 September 2015, p. 2.

⁵¹⁷ **C-0094**, Minutes of meeting between Alutrint, Golder, CMEC, JKGI and NEUI on 8 August 2006 (signed 9 August 2006).

⁵¹⁸ The parties agreed in the 2005 EPC Contract that Chinese GB standards were among the internationally recognised standards to be applied on the design of the works: **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 5 (Interpretation Agreement); p. 44 (Conditions of Contract, Sub-Clause 5.4).

collected data.⁵¹⁹

238. Golder, however, suggested that a PGA value of 0.31g should be used instead based on the Global Seismic Hazard Assessment Program 1999.⁵²⁰
239. In an attempt to accommodate Alutrint as much as possible, discussions on the seismic design parameter continued in the following months.
240. During the meeting held from 29 September to 2 October 2006, the parties agreed that, as the way forward, CMEC would provide a statement on the process of ascertaining the seismic design parameter by 3 October 2006 and Alutrint would reply to confirm the decision on the PGA value by 15 October 2006.⁵²¹
241. By letter of 3 October 2006, CMEC submitted a statement on the selection of the seismic design parameter for the Project as well as several other documents to explain the entire process of ascertaining the seismic design parameter.⁵²²
242. On 19 October 2006, Alutrint replied to confirm that a PGA of 0.3g should be used in the Project and that CMEC could "*continue the design work*" on this basis. Alutrint further suggested that it would separately respond to CMEC "*in the near future regarding the potential cost revision*".⁵²³
243. CMEC complied with this instructed change of the PGA value which caused a restart of the civil design of the whole plant.

Incoming Power Supply Voltage: 132kV to 220kV

244. In November 2006, NEUI completed the basic design for 300kA pot technology.⁵²⁴ From 11 to 18 January 2007, Alutrint, through its consultant KTD, reviewed the basic

⁵¹⁹ **C-0094**, Minutes of meeting between Alutrint, Golder, CMEC, JKGI and NEUI on 8 August 2006 (signed 9 August 2006), p. 2. PGA is used by engineers to determine the level of ground shaking that structures must withstand during an earthquake.

⁵²⁰ *Id.* p. 2.

⁵²¹ **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 4.

⁵²² **C-0109**, Letter from CMEC to Alutrint dated 3 October 2006.

⁵²³ **C-0110**, Letter from Alutrint to CMEC dated 19 October 2006.

⁵²⁴ **C-0347**, Letter from CMEC to Alutrint dated 22 April 2013, p. 1; **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013, p. 3.

design, which included 141 volumes of drawings (equal to 860 A1-sized drawings). It was confirmed through signed meeting minutes that "*KTD and CMEC are satisfied with the quality and depth of the basic engineering work done by NEUI.*"⁵²⁵

245. On 24 May 2007, Alutrint requested CMEC to carry out redesigns to accommodate an incoming voltage of 220 kilovolts (**kV**) instead of the originally planned 132kV, due to the requirements by the Trinidad and Tobago Electricity Commission (**T&TEC**):

"As you are aware, the high voltage power supply to the Smelter Complex is currently designed for 132,000 volts.

The Trinidad and Tobago Electricity Commission (T&TEC) has informed Alutrint that they would prefer to operate their substation and transport power to the grid from the substation at 220,000 volts instead of 132,000 volts.

We are therefore requesting that the Alutrint High Voltage substation be re-designed to accept a high voltage of 220,000 volts. We would be grateful if you can advise us of the implications of this design change to the project."⁵²⁶

246. On 1 June 2007, CMEC replied to Alutrint's 24 May 2007 letter, pointing out that a change of the power grid voltage from 132kV to 220kV would significantly impact the power supply and rectifier systems of the Project. CMEC further shared its observations on the technical solutions and cost increase.⁵²⁷
247. The parties held further discussions in the technical meeting from 6 to 10 August 2007 in Beijing, China.⁵²⁸
248. On 9 August 2007, as agreed in the meeting,⁵²⁹ CMEC provided two technical schemes (with price proposals) to accommodate this T&TEC-mandated national grid upgrade, for Alutrint's consideration and selection.⁵³⁰

⁵²⁵ **C-0114**, Minutes of meeting between Alutrint, KTD, CMEC and NEUI from 11 January 2007 to 18 January 2007 in Shenyang, China (signed 23 January 2007), p. 1.

⁵²⁶ **C-0129**, Letter from Alutrint to CMEC dated 24 May 2007.

⁵²⁷ **C-0130**, Letter from CMEC to Alutrint dated 1 June 2007.

⁵²⁸ **C-0136**, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 10 August 2007 in Beijing, China, p. 5 (item 9); p. 6 (item 11).

⁵²⁹ *Id.* p. 6 (item 11).

⁵³⁰ **C-0134**, Letter from CMEC to Alutrint dated 9 August 2007. The two schemes as presented in this letter were summarised in **C-0137**, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August

	Scheme	Price Increase
1.	An additional 220kV to 132kV substation to feed the existing design: To provide a second substation to transform the supply voltage from 220kV to 132kV and then feed into the substation as currently designed.	US \$7.4 million
2.	A redesign of the substation: To redesign the substation to directly receive an input voltage of 220kV (and therefore maintain only one substation).	US \$10.46 million

249. On 19 September 2007, Alutrint, despite having initially indicated an agreement for Scheme 1,⁵³¹ decided to move forward with Scheme 2 outlined in CMEC's 9 August 2007 letter. As to the resulting price increase, Alutrint stated that it "*wish[ed] to hold further discussions about economic value of this proposal with regards to the cost impact factors identified by CMEC.*"⁵³²
250. Following further discussions, on 30 May 2008, in the Tender for the 2008 EPC Contract, CMEC quoted US \$10.8 million for the design and other adjustments caused by the 132kV to 220kV input voltage change.⁵³³
251. CMEC carried out the redesign of the rectifier switchyard (i.e. the substation) as instructed.

Pot Technology Upgrade: 300kA to 330kA (including related rectifier voltage adjustments: 730V to 1,250V to 730V to 670V)

252. On 10 August 2007, Alutrint and CMEC executed a Technical Scheme Description,⁵³⁴ which was agreed to constitute an expansion of the original smelter technical

2007, p. 3; and C-0139, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 15 August 2007 in Beijing, China, p. 2 (para. 9).

⁵³¹ C-0139, Minutes of meeting between Alutrint and CMEC from 6 August 2007 to 15 August 2007 in Beijing, China, p. 2 (para. 9).

⁵³² C-0143, Letter from Alutrint to CMEC dated 19 September 2007.

⁵³³ C-0151, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008, p. 12.

⁵³⁴ C-0137, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August 2007.

specifications contained in the Technical Design Agreement dated 4 November 2005.⁵³⁵

253. Some of the agreed technical specifications were as follows:

"The final capacity of Alutrint Smelter will be 250kt/a of primary aluminum. The smelter will be built in two phases, each phase of 125kt/a. Two potlines and two rectifier stations will be built to meet the 250kt/a capacity. This design is only for Phase I of the smelter.

Ingot Capacity: 125 kt/a

Capacity of Prebaked Anode Carbon Block: 75 kt/a

No. of Pots: 156 sets (including 1 standby)

Normal working Cell Voltage : 4.15 V

Average Cell Voltage: 4.17 V

Potline DC Voltage: 730 V [i.e. 730V rectifier]

Potline DC Current: 300 kA [i.e. 300kA cells]

*AC voltage of Power Supply: 132 kV; 60Hz" (emphases added)*⁵³⁶

254. On 5 May 2008, CMEC received from Alutrint a list of "Smelter Key Recommendations", which appears to be what a "review team" recommended should be implemented following a "brief technical assessment".⁵³⁷

255. Two recommendations among the list were to: (i) "[c]hange rectifier voltage to 1500V (This would allow for the second stage expansion with only marginal increase in capital

⁵³⁵ **C-0137**, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August 2007, p. 3 (last paragraph of the side letter); **C-0073**, Alutrint Aluminium Smelter Technical Design Agreement dated 4 November 2005.

⁵³⁶ **C-0137**, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August 2007, p. 36 (under 4.1.3 "Process Conditions and Requirements for Aluminum Electrolysis"). "DC" refers to direct current, the type of electrical current used within the smelting process; "AC" refers to alternating current, the type of electrical current supplied by the power grid. A rectifier is an electrical device that converts AC to DC.

⁵³⁷ **C-0149**, Smelter design recommendations received from Alutrint on 5 May 2008 (with CMEC's received stamp, marked "080505").

cost"); and (ii) "[u]pgrade the technology to 320 kA to increase phase 1 metal output to 140ktpa".⁵³⁸

256. On 19 May 2008, Alutrint issued the request for proposal for the reduced scope smelter-only Project.⁵³⁹ In relation to the technical specifications, Alutrint largely incorporated the earlier "*Smelter Key Recommendations*" shared with CMEC and proposed a total of 13 adjustments (items 5.1 to 5.13) to the August 2007 technical specifications:

"5. Identical Technical Specifications as per the Smelter Blue Book [i.e. the Technical Scheme Description] approved in August 2007, save and except for:

[...]

5.2 Change to more cost-effective rectifier voltage (e.g. 1500V), in anticipation of Phase II Expansion

[...]

*In your response, CMEC is permitted to suggest an alternative opinion for any of the aforementioned specification adjustments. (e.g. rectifier design)."*⁵⁴⁰

257. In submitting its 30 May 2008 proposal, CMEC suggested that to ensure safe operation, the rectifier voltage could be upgraded at most to 1,300V, not 1,500V.⁵⁴¹ Therefore, if Alutrint required to reach the 250,000 mtpy ultimate capacity in Phase II with a single potline served by a single rectifier (which departed from the original "two potlines and two rectifiers" design), it would be necessary to upgrade the cell design to 330kA.⁵⁴² As mentioned in paragraph 75 above, increasing the amperage (current) in electrolytic cells could, among other benefits, enhance current efficiency and increase production capacity. CMEC offered to complete the technical scheme for the 330kA option within two months.⁵⁴³

⁵³⁸ *Id.* p. 1.

⁵³⁹ **C-0150**, Letter from Alutrint to CMEC dated 19 May 2008.

⁵⁴⁰ *Id.* pp. 2-3.

⁵⁴¹ **C-0151**, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008, pp. 14, 17.

⁵⁴² *Id.* p. 17.

⁵⁴³ **C-0151**, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008, p. 17. This involved developing core technologies, including the potline, busbar, rectification and power supply, and foundation treatment (all of which were essential for the overall functionality and efficiency of the smelting process), as well as

258. From 19 to 27 August 2008, Alutrint reviewed the 330kA cell design developed by NEUI.⁵⁴⁴ After technical discussions with CMEC and NEUI, the parties reached a joint recommendation that the Project should utilise NEUI's 330kA technology package with a 1,250V rectifier station:⁵⁴⁵

"1. NEUI's 330KA reduction cell technology package can provide the basis for a 250,000t/a aluminum smelter with one potline. The 330KA reduction cell technology package has incorporated major developments in reduction cell technology carried out in recent years in China, and is a mature technology. Compared with the 300KA reduction cell technology package, besides having all features of the 300KA cell, the 330KA cell also has superior advantages of control of total emissions to the environment, DC power consumption, superior magnetic field configuration and cell control system.

2. The 1250V DC rectifier station can fully meet the requirement for a 250,000t/a aluminum smelter with 330KA reduction cells. [...]"⁵⁴⁶

259. On 26 September 2008, Alutrint formally confirmed that it "accept[ed] the NUI-330 kA cell design applied for the Alutrint Smelter, and for the 1250 V rectifier station to be built in Phase I", and instructed CMEC to "start the engineering work related to this decision as soon as possible"⁵⁴⁷ (which CMEC did as instructed).
260. However, Alutrint once again changed the decision on rectifier voltage in two months. By letter of 20 November 2008 titled "*Layout and Rectifier Decisions*", Alutrint stated that it decided to revert to the 730V rectifier per phase configuration to move forward with the Project expeditiously while ensuring no fluoride impact in Phase II expansion:

"With respect to the Phase II expansion, a recently-submitted fluoride report from an international specialist indicates that fluorides continue to pose no risk to human health in the surrounding population. There may be potential in a relatively small area for minor fluoride impact on nearby sensitive plant species (if any exist). Alutrint expects that this can be addressed through engineering solutions and/or productive and regular dialogue with the EMA and the community. To perform this properly and effectively however, will take some

verifying and testing these core technologies: **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013, p. 12.

⁵⁴⁴ **C-0157**, Minutes of meeting between Alutrint, CMEC and NEUI from 19 August 2008 to 27 August 2008.

⁵⁴⁵ *Id.* p. 3.

⁵⁴⁶ *Id.* pp. 1-2.

⁵⁴⁷ **C-0159**, Letter from Alutrint to CMEC dated 26 September 2008.

time, and we cannot afford to compromise another dry season while that exercise is completed.

*As a result of the time required to confirm a final approved orientation/location of Phase II, it is considered a prudent risk-mitigation action to revert to the **single 730kV rectifier per phase**. This decision eliminates the risk of having an oversized rectifier indefinitely service only Phase I on the smelter, in the eventuality that Phase II is located elsewhere within the Estate, and in a non-linear manner." (emphasis in the original)⁵⁴⁸*

261. Given that NEUI had already completed the technical scheme for 330kA cell design by this time and that the 330kA technology incorporated a number of major technological advancements in recent years compared to the 300kA technology, the parties agreed to still apply the 330kA cell design for Phase I. Further, with this more efficient technology available, it would be sufficient to have a 670V rectifier station and a 140-pot potline to meet the 125,000 mtpy Phase I output. These adjustments were reflected in the finalised Technical Specifications for the 2008 EPC Contract entered into on 16 January 2009:

- " • Nominal voltage of power supply: 220kV*
- Annual capacity of molten aluminium: 125kt (phase I requirement)*
- Number of reduction cells: 140 (phase I requirement)*
- Average cell voltage: 4.17V*
- Rectifier DC rated voltage: 670V*
- DC current of potline: 330kA" (emphases added)⁵⁴⁹*

262. The back-and-forth adjustments from 2007 to 2009 are summarised in the table below:

⁵⁴⁸ C-0162, Letter from Alutrint to CMEC (with attachments) dated 20 November 2008, p. 1.

⁵⁴⁹ C-0168, Technical Specifications dated 16 January 2009, p. 14.

Date Instructed / Approved	Rectifier Voltage	Cell / Pot Design	Plant Layout
August 2007	730V	300kA	Two potlines; two rectifiers
September 2008	1,250V	330kA	One potline; one rectifier
November 2008	730V	330kA	Two potlines; two rectifiers
January 2009	670V	330kA	Two potlines; two rectifiers

263. It is pertinent to note that an upgrade from 300kA to 330kA pot technology *overall* led to no price increase for Alutrint.⁵⁵⁰ This was because fewer pots would need to be procured and installed to achieve the same overall production capacity; and fewer pots would also lead to a reduction in associated infrastructure, such as the busbar and the potroom building. These savings in procurement, construction, and installation could have balanced out the increased design works and costs. However, given that the Project was prematurely terminated, the increased design works (which have been carried out) remain uncompensated.
264. For completeness, the 330kA pot technology would also have contributed to long-term operational savings in running the smelter due to its higher efficiency, lower energy consumption, and reduced maintenance and environmental compliance costs.

Change in Engineering Codes and Standards: Chinese to MoWT Guidelines (including without limitation the change of wind speed design parameter)

265. As noted above, on 16 January 2009, Alutrint and CMEC executed the finalised Technical Specifications for the 2008 EPC Contract.⁵⁵¹ The Technical Specifications contained a section titled "*Engineering Standards, Codes and Regulations*",⁵⁵² which stipulated that "[e]xcept safety and environment protection standards, all other standards used for this project will be of latest **Chinese engineering standards**",⁵⁵³ including with respect to "**all designs relating to structural, architectural, mechanical,**

⁵⁵⁰ C-0151, Letter from CMEC to Alutrint (with attachment) dated 30 May 2008, pp. 17-18.

⁵⁵¹ C-0168, Technical Specifications dated 16 January 2009.

⁵⁵² *Id.* pp. 109-133.

⁵⁵³ *Id.* p. 111.

electrical & instrumentation, heating, ventilation & air conditioning, [and] water supply & drainage" (emphases added).⁵⁵⁴

266. From 13 to 17 April 2009, Alutrint (together with CMEC, CMIIC, and NEUI) reviewed the completed 330kA basic design.⁵⁵⁵ Alutrint approved and signed the basic design drawings after a *"thorough"* review *"based on the contract, standard and regulation"*; and further agreed that *"[t]he approved Basic Design will be the basis for detail[ed] design"*.⁵⁵⁶
267. From 23 June to 1 July 2009, Alutrint reviewed (a) the structural drawings of the potrooms and (b) the architectural drawings of the potrooms, pot overhaul shop, carbon block storage, anode rodding shop, and maintenance building.⁵⁵⁷ After review, Alutrint confirmed that *"[a]ll architectural drawings reviewed have met the Client's requirements on the overall arrangement, building functions and enclosure structures"* and that *"[t]he structural design of the potroom has met requirements of [relevant] Chinese codes"*.⁵⁵⁸
268. Alutrint, however, raised at this stage that the structural documents submitted for approval should be in accordance with the *"Guidelines"* from Trinidad and Tobago's Ministry of Works and Transport (**MoWT**). In particular, it commented that the wind load used in the design was different from what was recommended to be used by the MoWT.⁵⁵⁹
269. The *"Guidelines"* referred to the MoWT's 2001 Structural Design Guidelines for Trinidad and Tobago (**MoWT Guidelines**).⁵⁶⁰ The MoWT Guidelines set out the *"recommended"* codes and standards for the design of building structures in Trinidad

⁵⁵⁴ *Id.* pp. 111-112.

⁵⁵⁵ **C-0178**, Minutes of meeting between Alutrint, CMEC, CMIIC and NEUI from 13 April 2009 to 17 April 2009 in Shenyang, China.

⁵⁵⁶ *Id.* p. 1.

⁵⁵⁷ **C-0188**, Minutes of meeting between Alutrint and CMEC from 23 June 2009 to 1 July 2009 in Zhengzhou, China.

⁵⁵⁸ *Id.* p. 1.

⁵⁵⁹ *Id.* p. 1.

⁵⁶⁰ **C-0061**, Ministry of Works and Transport's Structural Design Guidelines for Trinidad and Tobago dated December 2001.

and Tobago, which were primarily American.⁵⁶¹ With respect to wind loads, the MoWT Guidelines recommend a wind speed of 125 miles per hour (**mph**) measured over a 3-second gust.⁵⁶²

270. In this connection, it bears reiteration that (in addition to the explicit provision in the January 2009 Technical Specifications) CMEC has made clear from as early as June 2005 that Chinese codes and standards should control the design of the Project over non-mandatory local guidelines⁵⁶³ (see paragraph 77.3 above).
271. On 21 July 2009, Alutrint informed CMEC that the MoWT had rejected CMEC's building / structural drawings for reasons including that the design calculations followed Chinese codes and did not apply the MoWT-recommended wind speed of 125mph.⁵⁶⁴
272. On 10 August 2009, CMEC expressed its position to be that (a) to the extent that the wind speed of 125mph was a compulsory requirement (by MoWT's practice, not by law), CMEC could make relevant design modifications with a corresponding claim for the increased engineering cost; but (b) Alutrint was advised to coordinate with the MoWT to streamline the approval process by adhering to Chinese engineering codes and standards as agreed in the contract documents.⁵⁶⁵
273. By reply of 14 August 2009, Alutrint refused to attempt any negotiations with the MoWT regarding the regulatory design approval process.⁵⁶⁶ Further, Alutrint sought a re-examination of the already approved structural design, recommending "*a comprehensive review of all drawings, including drawings [which have passed] reviews previously completed by our Structural/Civil Engineers considering the integrated approach requiring the involvement of all disciplines*".⁵⁶⁷

⁵⁶¹ *Id.* p. 2.

⁵⁶² *Id.* p. 2.

⁵⁶³ **C-0066**, Minutes of meeting between Alutrint and CMEC on 15 June 2005 in Couva, Trinidad and Tobago (signed 17 June 2005), p. 3 (8:00).

⁵⁶⁴ **C-0196**, Letter from Alutrint to CMEC dated 21 July 2009.

⁵⁶⁵ **C-0202**, Letter from CMEC to Alutrint dated 10 August 2009, pp. 1-2.

⁵⁶⁶ **C-0203**, Letter from Alutrint to CMEC dated 14 August 2009, p. 2.

⁵⁶⁷ *Id.* p. 1.

274. Further discussions took place during a site meeting held from 7 to 8 September 2009. As recorded in the minutes, CMEC agreed to implement the wind speed of 125mph, on the condition that Alutrint agreed to approve it as a variation, with negotiations on the price increase to follow.⁵⁶⁸ As to engineering standards in general, CMEC reiterated that the MoWT's requirements were out of line with the contractual stipulations and persuaded Alutrint to arrange a joint meeting with the MoWT to assess the path forward.⁵⁶⁹ CMEC also suggested redefining the scope of the upcoming preliminary design review to avoid repetitive review, which was rejected by Alutrint.⁵⁷⁰
275. On 25 September 2009, Alutrint formally communicated the MoWT's decision that the wind speed design parameter should be 125mph and instructed CMEC to "*ensure this amendment is made*".⁵⁷¹
276. From 26 October to 22 November 2009, an Alutrint review team including the expertise of Hatch, CMISC, and Votorantim conducted the planned comprehensive review of the 330kA preliminary design – involving the review of drawings, technical specifications, calculation sheets, and other related materials, and covering all nine disciplines (process, ventilation, water supply and drainage, thermal, power, automation, architecture, structure, and general layout).⁵⁷² Among the 816 drawings reviewed, Hatch and CMISC both approved more than 810 of them.⁵⁷³
277. During this review exercise, Alutrint and CMEC also executed a separate set of minutes titled "*Building Structure Design Approval and Review Process*" on 22 November 2009.⁵⁷⁴ In order to progress the design approval and the Project more generally, CMEC agreed to make design modifications to accommodate the MoWT Guidelines (without prejudice to CMEC's position that the MoWT Guidelines were non-binding recommendations and that redesigns to accommodate the same constituted a variation

⁵⁶⁸ **C-0208**, Minutes of Meeting between Alutrint, CMEC and CMIIC from 7 September 2009 to 8 September 2009 (signed 20 September 2009), p. 2 (Chinese); p. 2 (English).

⁵⁶⁹ *Id.* p. 2 (Chinese); p. 2 (English).

⁵⁷⁰ *Id.* p. 3 (Chinese); p. 3 (English).

⁵⁷¹ **C-0209**, Letter from Alutrint to CMEC dated 25 September 2009.

⁵⁷² **C-0217**, Memorandum on the Preliminary Design Review from 26 October 2009 to 22 November 2009 (signed 23 November 2009), p. 1.

⁵⁷³ *Id.* p. 3.

⁵⁷⁴ **C-0216**, Minutes of meeting between Alutrint and CMEC on 22 November 2009 in Zhengzhou, China.

to works under the 2008 EPC Contract). At a very high-level, the envisioned procedures were as follows:

"CMEC provide to the qualified TT design firms the design drawings and calculation sheets based on the Chinese Codes

*The qualified TT design firms verify and modify (if necessary) the design drawings and calculation sheets for submission to MoWT"*⁵⁷⁵

278. The redesigns from Chinese codes and standards to conform to the American and other international codes and standards pursuant to the MoWT Guidelines proved to be complex and time-consuming.⁵⁷⁶ On 1 March 2010, CMEC submitted, among other documents, full packages of the detailed architectural and structural drawings of the five main buildings (namely, potrooms, pot overhaul shop, carbon block storage, anode rodding shop, and maintenance building).⁵⁷⁷
279. Around this time, Alutrint engaged ABS Consulting as the certified verification agency⁵⁷⁸ to verify CMEC's submitted design documents according to the codes and standards specified in the MoWT Guidelines.⁵⁷⁹ On 6 July 2010, ABS Consulting issued an interim report on the structural design verification, certifying that *"the structural design of the two subject buildings in general conforms to the governing codes and standards"*⁵⁸⁰ (the two subject buildings being the potrooms and the pot overhaul shop, selected by ABS Consulting as the *"critical areas"*⁵⁸¹).

⁵⁷⁵ **C-0216**, Minutes of meeting between Alutrint and CMEC on 22 November 2009 in Zhengzhou, China, p. 2. NEUI also sent two representatives to Trinidad and Tobago to assist with the design approval: **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013, p. 12.

⁵⁷⁶ **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013, p. 7 (*"To facilitate the approval, NEUI purchased the structure design software from abroad, meanwhile employed the structure engineers working in the USA, assisting NEUI to complete the design for the 5 main workshops as per American standards"*).

⁵⁷⁷ **C-0221**, Alutrint's signed file receipt form dated 1 March 2010; **C-0347**, Letter from CMEC to Alutrint dated 22 April 2013, p. 2. *See also* **C-0249**, Letter from Alutrint to CMEC (with attachments) dated 22 July 2010, p. 38 (recording that the five structural design packages have been submitted to the MoWT for approval).

⁵⁷⁸ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, p. 5.

⁵⁷⁹ **C-0249**, Letter from Alutrint to CMEC (with attachments) dated 22 July 2010, p. 8.

⁵⁸⁰ *Id.* pp. 3, 7, 11.

⁵⁸¹ *Id.* p. 15.

Layout Adjustments

280. Throughout the Project, the general layout of the smelter plant has been changed no fewer than 15 times: from general layout (revision 0) approved on 6 November 2005⁵⁸² to general layout (revision 15) approved on 24 March 2009.⁵⁸³
281. The layout adjustments were necessitated by a number of different reasons at different stages of the Project. But achieving environmental compliance, including the EMA's specific requirements, was consistently one of the overriding considerations.
282. A few of the more significant layout adjustments and their environmental dimensions are discussed below.
283. On 25 August 2006, Alutrint instructed CMEC to perform a layout revision to meet the EMA's proposed air standards:

"Pot room Location adjustment - In order to achieve full compliance with the proposed Air Standards from the local Environmental Authority, it has become necessary to relocate the active potlines to the area further east on Union Estate, which was originally reserved for the 2nd Phase Potline. CMEC is asked to adjust to suit, and to provide any scheduling impact that this change may have." (emphases in the original)⁵⁸⁴

284. The EMA's proposed air standards in question referred to the hydrogen fluoride (**HF**)⁵⁸⁵ emission level of 1 µg/m³ on a 24-hour basis, as set out in Trinidad and Tobago's Draft Air Pollution Rules 2005. In contrast, the original design of the Project was based on conforming to the HF level of 3 µg/m³ as set out in the Draft Air Pollution Rules 2001.⁵⁸⁶ The EMA requested conformance with the more stringent 1 µg/m³ standard in its May

⁵⁸² **C-0074**, Letter from Alutrint to CMEC (with attachment) dated 6 November 2005.

⁵⁸³ **C-0174**, Letter from Alutrint to CMEC (with attachment) dated 24 March 2009.

⁵⁸⁴ **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 2. This layout positioned the potline farthest from the communities: **C-0092**, Supplementary Environmental Impact Assessment Report dated August 2006, p. 10.

⁵⁸⁵ HF is a toxic chemical produced during the aluminium smelting process.

⁵⁸⁶ **C-0111**, Addendum to Supplementary Environmental Impact Assessment Report dated November 2006, p. 7.

2006 comments⁵⁸⁷ after reviewing the January 2006 EIA report for CEC 1033/2005.⁵⁸⁸

285. As suggested in the instruction to CMEC, the mitigation of HF emissions to within the 1 µg/m³ limit was achieved primarily through re-engineering and re-designing the plant layout,⁵⁸⁹ which was admittedly "*at substantial cost and schedule impact*".⁵⁹⁰ Additional minor improvements also included an equipment technology upgrade from the original Chinese Gas Treatment Centre (**GTC**) to a slightly more efficient Western GTC.⁵⁹¹ The technical details were elaborated upon in an Addendum submitted to the EMA in November 2006, which CMEC and NEUI participated in preparing.⁵⁹²
286. Mr Philip Julien of Alutrint described these as "*three months of significant rework and a significant redesign*".⁵⁹³ Indeed, to ensure that the Project was on solid ground and fully feasible and environmentally compliant, Alutrint was "*the first Trinidad energy sector company to perform **extensive redesign at significant cost (USD Millions)** to conform to unlegislated draft air pollution rules*" (emphasis added) and "*one of the first aluminum facilities worldwide to agree with the conformance to the most stringent HF fenceline limitation of 1 µg/m³ on a 24 hour basis*".⁵⁹⁴
287. Further and relatedly, in the meeting among Alutrint, CMEC, and NEUI from 29 September to 2 October 2006, Alutrint confirmed the expansion decision, i.e. the Project would be built in two phases with a final capacity of 250,000 mtpy (125,000 mtpy each phase). CMEC accordingly further modified the plant layout (with additional cost and time to be discussed).⁵⁹⁵ A Phase II expansion was therefore taken into account

⁵⁸⁷ **C-0092**, Supplementary Environmental Impact Assessment Report dated August 2006, p. 25 (Comment 9.5).

⁵⁸⁸ **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006.

⁵⁸⁹ **C-0111**, Addendum to Supplementary Environmental Impact Assessment Report dated November 2006, p. 44.

⁵⁹⁰ **C-0111**, Addendum to Supplementary Environmental Impact Assessment Report dated November 2006, p. 8. See also **C-0120**, Letter from Alutrint to EMA (with attachment) dated 22 February 2007, p. 2 (Alutrint describing the CEC application process as involving "*extensive redesign and schedule delays*").

⁵⁹¹ **C-0111**, Addendum to Supplementary Environmental Impact Assessment Report dated November 2006, p. 9.

⁵⁹² *Id.* p. 1.

⁵⁹³ **C-0118**, *Alutrint redesigns to meet EMA standards*, Trinidad and Tobago Newsday, 29 January 2007, p. 1.

⁵⁹⁴ **C-0120**, Letter from Alutrint to EMA (with attachment) dated 22 February 2007, p. 2.

⁵⁹⁵ **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 5.

in the HF emission planning from the early beginning.

288. As mentioned in paragraph 260 above, on 20 November 2008, after commissioning and receiving a Phase II fluoride report from an international specialist, Alutrint decided to further adjust the Phase I rectifier voltage and the plant layout to make sure that there would be no likely fluoride impact from the Phase II expansion.

E.8 Suspension and Termination of the Project

(a) First Suspension Following the 2009 High Court Decision

289. On 16 June 2009, Justice Mira Dean-Armorer of the High Court of Trinidad and Tobago quashed the grant of CEC 1033/2005 and remitted the matter to the EMA for further consideration (**High Court Decision**).⁵⁹⁶

290. The High Court Decision was based on three procedural issues:

290.1 inadequate public consultations;⁵⁹⁷

290.2 improper deferral of the disposal plan of the spent pot lining (**SPL**)⁵⁹⁸ until after the issuance of the CEC;⁵⁹⁹ and

290.3 insufficient consideration of the cumulative impact of three related parts of the overall Project, namely, the aluminium complex, the power plant, and the port facility.⁶⁰⁰

291. Immediately following the High Court Decision, Mr Philip Julien, the then Acting CEO of Alutrint, by email of the same date instructed CMEC to "*stop work on site*" (emphasis added) until further notification.⁶⁰¹ But for this unexpected turn of events, Alutrint was

⁵⁹⁶ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, p. 200 (para. 125).

⁵⁹⁷ *Id.* p. 185 (para. 64).

⁵⁹⁸ SPL is a hazardous waste generated in the aluminium smelting process and requires batch disposal at intervals of approximately five years: **C-0077**, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 136.

⁵⁹⁹ **C-0018**, *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, p. 196 (para. 109).

⁶⁰⁰ *Id.* p. 199 (para. 118).

⁶⁰¹ **C-0022**, Email from P. Julien to J. Fu dated 16 June 2009 (with subsequent emails); **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 91.

prepared to issue a Notice to Proceed with permanent construction by mid-July 2009.⁶⁰²

292. On 21 June 2009, CMEC noted that Alutrint's instruction caused it to suspend the work of more than 200 site personnel; however, certain site activities if left incomplete before the rainy season would pose serious safety and environmental risks.⁶⁰³ CMEC wrote further on 24 June 2009 noting that CMEC would suffer delays and incur costs (including downtime costs and prolongation costs) from complying with Alutrint's instruction to suspend site works.⁶⁰⁴
293. On 1 July 2009, Alutrint clarified that while works related to the permanent construction of the smelter on the site (which were subject to the revoked CEC 1033/2005) had to be suspended, works and activities unaffected or covered under other CECs could be continued, resumed or commenced, including:⁶⁰⁵
- 293.1 construction works on the TWC (covered by a TWC-specific CEC, i.e. CEC 1982/2007⁶⁰⁶);
 - 293.2 activities to minimise health, safety or environmental risks or hazards on the site (specific items of work subsequently identified on 17 July 2009⁶⁰⁷);
 - 293.3 design drawings review and approval;
 - 293.4 technical supplier / vendor procurement review;
 - 293.5 training proposal and programme; and
 - 293.6 procurement and shipment of equipment and materials.
294. Alutrint also assured CMEC that it was working with the State to actively resolve the impediment to works caused by the High Court Decision: *"Alutrint and the Government of Trinidad and Tobago are actively reviewing opportunities to ensure that this*

⁶⁰² **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 23.

⁶⁰³ **C-0185**, Letter from CMEC to Alutrint dated 21 June 2009.

⁶⁰⁴ **C-0186**, Letter from CMEC to Alutrint dated 24 June 2009.

⁶⁰⁵ **C-0021**, Letter from Alutrint to CMEC dated 1 July 2009.

⁶⁰⁶ **C-0169**, CEC 1982/2007 dated 30 January 2009.

⁶⁰⁷ **C-0195**, Letter from Alutrint to CMEC dated 17 July 2009.

unexpected turn of events is favourably resolved in a timely manner. Alutrint is confident that solutions will be developed to permit CMEC's work to restart in as short a time as possible."⁶⁰⁸

295. By a further letter of 30 July 2009, Alutrint informed CMEC of the EMA's appeal against the High Court Decision (discussed below). In the meantime, Alutrint proposed a series of non-construction activities for completion from August to November 2009 with a view to allowing immediate construction once the CEC had been re-established.⁶⁰⁹ Further correspondence was exchanged between the parties regarding the details of execution.⁶¹⁰
296. With those non-construction activities having been undertaken as instructed, on 2 March 2010, Alutrint gave a formal notice of resumption of certain site construction works, to the extent that those works could be covered by CEC 0394/2003 (the site preparation CEC which was in place since March 2004 (see paragraph 58 above)).⁶¹¹
297. As the site construction works that were instructed by Alutrint to be resumed increased, CMEC's personnel on the site managed to return to full work status by 1 April 2010.⁶¹²
298. This Alutrint-directed work stoppage ran from 18 June 2009 to 31 March 2010. It affected only the site construction works governed by CEC 1033/2055. On 10 May 2010, CMEC submitted a US \$3.8 million downtime claim for the costs incurred due to a large number of site workers, machinery, and equipment being put in idle status during this period.⁶¹³

⁶⁰⁸ **C-0021**, Letter from Alutrint to CMEC dated 1 July 2009, p. 2.

⁶⁰⁹ **C-0200**, Letter from Alutrint to CMEC (with attachments) dated 30 July 2009.

⁶¹⁰ *See, e.g.*, **C-0202**, Letter from CMEC to Alutrint dated 10 August 2009; **C-0203**, Letter from Alutrint to CMEC dated 14 August 2009.

⁶¹¹ **C-0222**, Letter from Alutrint to CMEC (with attachment) dated 2 March 2010.

⁶¹² **C-0230**, Letter from CMEC to Alutrint dated 10 May 2010.

⁶¹³ *Ibid.*

299. While the site construction encountered a setback as a result of the High Court Decision, as described above, CMEC (especially its China-based team) continued to carry out a substantial amount of other Project work at Alutrint's instruction and the Project was overall still actively progressing during this period.
300. This was because the State and other relevant actors were adopting a flexible approach with respect to the CEC issues and proactively pursuing a number of actions to secure a reinstatement of CEC 1033/2005 (or an equivalent new CEC).
301. On 6 July 2009, the EMA filed a notice of appeal with the Court of Appeal of Trinidad and Tobago against the High Court Decision.⁶¹⁴ The appeal was docketed as Civil Appeal No. 155 of 2009.⁶¹⁵
302. On the same day, the EMA issued a release standing by its decision to "*grant the CEC after thorough and qualified review over a period of more than two years, involving consultation with the public*". The EMA claimed that it was acting independently on behalf of the public by "*balancing environmental considerations with economic ones*". Further, the EMA stated that it was satisfied that it had discharged its statutory duties and taken appropriate precautionary measures to prevent serious and irreversible damage to the environment, and that "*the learned judge erred in reaching her conclusions*".⁶¹⁶
303. On 7 July 2009, Alutrint filed a notice of application to join the appeal as an interested party.⁶¹⁷ On the same day, Mr Leroy Mayers, Permanent Secretary of the MEEI and Chairman of Alutrint, submitted an Affidavit on behalf of Alutrint,⁶¹⁸ specifying that:
- 303.1 the overall Project (i.e. the Alutrint smelter and related support projects) was budgeted to cost US \$1.4 billion; and

⁶¹⁴ **C-0192**, *EMA appeals judge's Alutrint CEC decision*, Trinidad and Tobago Guardian, 7 July 2009.

⁶¹⁵ **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, p. 1.

⁶¹⁶ **C-0192**, *EMA appeals judge's Alutrint CEC decision*, Trinidad and Tobago Guardian, 7 July 2009.

⁶¹⁷ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 221.

⁶¹⁸ **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009.

303.2 over US \$541 million had been expended as of the date of his Affidavit.⁶¹⁹

304. On or around 13 July 2009, at the request of the EMA, the Court of Appeal of Trinidad and Tobago agreed that the appeal be deemed urgent, and that the hearing be expedited and fixed on a date in September 2009.⁶²⁰

305. The hearing of the appeal commenced on 22 September 2009 and lasted 11 days, over three tranches in September, October, and November of that year.⁶²¹

306. At the conclusion of the hearing on 8 November 2009, Chief Justice Ivor Archie commended the appeal as "*one of the best argued cases*" and indicated that the judgment, while reserved, "*will be given as soon as possible*".⁶²² During the hearing, Chief Justice Ivor Archie cautioned that the environmental groups had a "*heavy burden*" to show that the EMA's actions were "*outrageous*" and "*irrational*" as Justice Mira Dean-Armorer had ruled.⁶²³

307. In the meantime, while the EMA was pressing on with the judicial appeal to reinstate the original CEC, the State had been concurrently preparing for a re-application with the EMA for a new CEC to cure any alleged procedural deficiencies, all to ensure that the construction of the smelter could commence at the earliest possible opportunity.

307.1 In or around early July 2009, Prime Minister Patrick Manning, in commenting on the High Court Decision, confirmed that the State had decided to continue with the Project. He said that "[t]he court had objected to the process under which the CEC was granted and not to the smelter plant itself. The courts did not object to the smelter, **the courts just said the process needed to be beefed up in a certain area and that's what we are seeking to do now**" (emphasis added). Manning further revealed that the EMA was "*moving as fast as*

⁶¹⁹ *Id.* para. 14.

⁶²⁰ **C-0194**, F. Joseph, *Smelter appeal to be heard in September*, Trinidad and Tobago Guardian, 13 July 2009.

⁶²¹ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 56; **C-0214**, Day-by-day news reports on the appeal hearing at the Trinidad and Tobago Court of Appeal, 22 September 2009 to 9 November 2009.

⁶²² **C-0214**, Day-by-day news reports on the appeal hearing at the Trinidad and Tobago Court of Appeal, 22 September 2009 to 9 November 2009, p. 16.

⁶²³ *Id.* p. 4.

possible" to ensure that "if a CEC is granted in the future, it is in accordance with all the procedure[s] and to obtain the satisfaction of the court".⁶²⁴

307.2 In line with Prime Minister Manning's instruction, on 16 September 2009, Energy Minister Conrad Enill announced that "[w]e are going back to the EMA as suggested" and that the process of reapplying for a new CEC was "going on now". He suggested that the State had addressed the questions previously raised after the consultation with the La Brea community, including the disposal of SPL.⁶²⁵

308. On the back of this belt-and-braces approach, the MOF reassured the State's strong commitment to, as well as confidence in, the completion of the Project in a letter to Sinosure dated 15 September 2009 (which was later forwarded to CMEC):

*"The EMA, which is responsible for environmental protection and conservation in the context of sustainable development – and against who[m] the Claimants had successfully filed – has themselves filed an appeal to the decision. **Alutrint Limited, and the Attorney General – on behalf of the Government of the Republic of Trinidad and Tobago – have joined the appeal as interested parties. The Government and Alutrint are therefore actively pursuing this action.***

The Court of Appeal has agreed to hear the appeal in a relatively short time, and has set aside the approximate period of September 21-25, 2009 for the hearing.

We are confident that the matter will be resolved in favour of the continuation of the aluminium smelter project.** We will await the sentiment of the Appeal Court (expected hopefully a few weeks after the hearing) to determine the best way forward, which may be **via the judicial system, or through an administrative recovery process with the EMA.

*Notwithstanding, **we are committed in our resolve to complete the project, which is one of the main pillars of the industrialization strategies of the Government of the Republic of Trinidad and Tobago.***" (emphases added)⁶²⁶

⁶²⁴ **C-0191**, *Appeal filed to resume smelter construction*, Trinidad and Tobago Express, 7 July 2009.

⁶²⁵ **C-0207**, K. Subero, *Going back to EMA: Minister vows to get smelter project up and running soon*, Trinidad and Tobago Express, 16 September 2009, p. 1.

⁶²⁶ **C-0206**, Letter from MOF to Sinosure dated 15 September 2009, p. 2.

309. Furthermore, during this period, the construction of the Trinidad Generation Unlimited (TGU) power plant (to supply electricity for the smelter⁶²⁷) and the port facilities (to transport raw materials to and output products from the smelter⁶²⁸) continued as normal under their respective CECs.⁶²⁹ Given that the Alutrint smelter was the "*focus and justification*" of these related industrial projects,⁶³⁰ it gave CMEC extra assurance that the State would keep the Project alive and bring it to fruition.
310. Relying on these assurances and encouragements, CMEC continued to invest substantial human, financial, and technical resources in the Project to undertake further works and incur further costs after the High Court Decision. CMEC made these investments with the expectation (nurtured by the State) that the Project would be carried out to its full completion.

(b) Second Suspension Following the 2010 Change of Government

311. On 24 May 2010, the UNC-led People's Partnership coalition defeated the PNM in the 2010 Trinidad and Tobago general election.⁶³¹ This defeat ended Patrick Manning's term as Prime Minister of Trinidad and Tobago. He was succeeded by Prime Minister Kamla Persad-Bissessar.
312. The 2010 Trinidad and Tobago general election was later revealed to have been influenced by an "Election Engineering" campaign financed by former FIFA Vice President and UNC Chairman Jack Warner,⁶³² who has been at the centre of numerous

⁶²⁷ **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 16

⁶²⁸ *Id.* para. 25.

⁶²⁹ **C-0189**, R. Sookraj, *Alutrint: Smelter works at a standstill*, Trinidad and Tobago Guardian, 1 July 2009 (quoting NEC's statement on works underway at the Union Industrial Estate). *See also* **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 4 (summarising the status of the supporting infrastructure and projects as of July 2010).

⁶³⁰ **C-0171**, Letter from Alutrint to CMEC dated 27 February 2009, p. 1.

⁶³¹ **C-0023**, Caribbean Elections, *Trinidad and Tobago General Election Results - 24 May 2010*, http://www.caribbeanelections.com/tt/elections/tt_results_2010.asp (last accessed 21 February 2023).

⁶³² **C-0495**, A. Delić and M. Bassant, *Ex-FIFA Executive Jack Warner Financed "Election Engineering" Campaign in Trinidad*, Oštro, 23 December 2022.

Mr Jack Warner entered the UNC as Chairman in 2007 and was a key figure in his home country's 2010 general election – he endorsed Mrs Kamla Persad-Bissessar to lead the UNC in January 2010 and was instrumental in the birth of the People's Partnership coalition on 21 April 2010: **C-0400**, *Highlights of Warner's political career*, Trinidad and Tobago Express, 26 May 2015.

corruption allegations over the years.⁶³³

313. The People's Partnership coalition had opposed the Project while in opposition and during the 2010 election campaign.⁶³⁴ After assuming office, the new administration did not reverse this campaign pledge. For example:

313.1 on 24 May 2010, Mr Jack Warner, the new Minister of Works and Transport, reiterated that the People's Partnership Government would not permit the construction of the Project;⁶³⁵ and

313.2 on 5 July 2010, Mrs Carolyn Seepersad-Bachan, the new Minister of Energy and Energy Affairs, confirmed that the People's Partnership Government had pulled the plug on the Project.⁶³⁶

314. On 27 May 2010, by letter to Alutrint, CMEC expressed its continued belief in the Project despite Mr Jack Warner's 24 May 2010 statement and urged Alutrint's collaboration in obtaining the support from the new Government. In addition, CMEC queried the status of the pending Court of Appeal judgment.⁶³⁷

315. On 28 May 2010, Mr Frank Look Kin, the then Chairman of Alutrint, notified CMEC by email that as the new Government intended to "*shut down the Alutrint project*", the expenditures by Alutrint would be reduced and/or terminated and subject to monthly approval "*until the Government [of Trinidad and Tobago] determines the future of the company*".⁶³⁸

316. Therefore, at that juncture, CMEC encountered the second work stoppage period on the Project. CMEC understood from its exchanges with Alutrint that no further works (including without limitation the site works) could be progressed without the formal

⁶³³ See, e.g., **C-0024**, S. Tobin and S. Sridhar, *Ex-FIFA vice president Warner loses appeal against extradition from Trinidad*, Reuters, 17 November 2022.

⁶³⁴ **C-0250**, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010 ("*On the campaign trail and even before an election was called, the then Opposition was saying no to the smelter. Present government ministers and senators even joined in the protest to stop the plant from being constructed.*").

⁶³⁵ **C-0025**, *Jack: Local govt polls coming*, Trinidad and Tobago Guardian, 25 May 2010.

⁶³⁶ **C-0244**, *Govt pulls plug on smelter*, Trinidad and Tobago Express, 6 July 2010.

⁶³⁷ **C-0236**, Letter from CMEC to Alutrint dated 27 May 2010.

⁶³⁸ **C-0026**, Emails among F. Look Kin, S. Luo, P. Julien and J. Duo from 28 May 2010 to 2 June 2010.

approval of the new Government.⁶³⁹

317. Around the same time, CMEC started to submit a number of payment claims and reminders to Alutrint in relation to the works that it carried out and/or costs incurred (including progress payments for the PDC works).⁶⁴⁰
318. In August 2010, mindful that three months had passed since the May general election and that CMEC still had not been given an opportunity to present its position and proposals on the way forward for the Project, CMEC proactively reached out to the MEEA⁶⁴¹ to (a) provide an overview on the Project's implementation status, feasibility and viability, and its benefits to Trinidad and Tobago, (b) emphasise CMEC's continued commitment to the Project, and (c) seek an opportunity to understand and discuss the new Government's concerns and requirements regarding the Project. As CMEC wrote in its 20 August 2010 letter:

*"It has been already 6 years since the Contract of the Smelter Project was signed. During that time, in addition to positively implementing the obligation of the Contract, **CMEC, in order to build a Smelter satisfied by local people, devote a great deal of manpower, material resources and financial supports to modify and optimize the technical proposal and tests time after time in accordance with requirements from your Government, environmental protection department and local people, which mainly includes: [...].***

*Since the receipt of Notification of Mobilization [by NGETF on 7 August 2008], **CMEC has dispatched almost 300 personnel to the site. And through two years' hard works, a great deal of fundamental preparatory work has been completed. The works mainly include: [...]. Therefore, the site has presently been fully satisfied with various conditions to start the entire construction phase.***

*Chinese Government has been paying highly attention to the Alutrint Smelter Project. The Government not only appoints CMEC to **provide the most advanced and reliable technology to the Smelter and long-term supporting***

⁶³⁹ See, e.g., **C-0027**, Letter from Alutrint to CMEC dated 28 October 2010, p. 1 (as summarised by Alutrint, "[t]he second and current work stoppage period effectively resulted in May 2010 at which point all pre-piling site works [were] substantially completed. Further works on the project (e.g. engineering, procurement) ha[ve] not yet been progressed as one is awaiting formal approval from the new GORTT representation.").

⁶⁴⁰ See, e.g., **C-0235**, Letter from CMEC to Alutrint dated 26 May 2010; **C-0028**, Letter from CMEC to Alutrint dated 27 May 2010; **C-0237**, Letter from CMEC to Alutrint dated 4 June 2010; **C-0239**, Letter from CMEC to Alutrint (with attachments) dated 13 June 2010; **C-0245**, Letter from CMEC to Alutrint dated 7 July 2010; **C-0247**, Letter from CMEC to Alutrint (with attachments) dated 12 July 2010.

⁶⁴¹ MEEA was the rebranded name of MEEI during the 2010-2015 People's Partnership administration. See footnote 51 above.

services on technology, operation and maintenance during operation period of the Smelter, but also positively provides 400M US Dollar financial support to the Project to guarantee almost the whole capital required by project construction.

So far, the Loan Agreement has been signed for a long time, while the Project is still under suspension. However, the related departments of Chinese Government still express their attitudes to support the smelter construction, respect the signed agreement between two nations, and ***the loan of 400M US Dollar on the Project is still valid.***

In addition, the downstream deep processing industry — an important component of aluminum industry — is close to the development of small & medium enterprises, people's life and cultivation of talents. In addition to leading the world position of aluminum production, China also has abundant and successful experiences in downstream deep processing industry. In this respect, ***CMEC is willing and able to cooperate with your Government to provide the related technical supports on planning for the downstream industry and preparation of the processing plant.***

The completion of the Smelter Project, to [a] great extent, can enlarge the local employment opportunity and promote the surrounding infrastructure development such as roads, drainage system, housing, etc., which will finally improve the living quality of the local people.

We have deeply understood that your Government paid much importance to environmental protection and people's living issues. ***We sincerely expect to know more about the issues on smelter construction concerned by the New Government, the conditions it requires, and also the new requirements and ideas on the Project.*** CMEC is always willing to cooperate with your Government." (emphases added)⁶⁴²

319. This letter received no response. Instead, the State proceeded directly to announce the cancellation of the Project on 8 September 2010 (discussed below).
320. It later transpired that Mrs Carolyn Seepersad-Bachan on behalf of the MEEA prepared a Cabinet Note on or around 16 July 2010.⁶⁴³ The Cabinet Note lacked input from CMEC and contained a highly-understated estimate (but an acknowledgement) of the

⁶⁴² C-0251, Letter from CMEC to MEEA dated 20 August 2010, pp. 2-3.

⁶⁴³ C-0248, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010.

termination costs with CMEC.⁶⁴⁴

321. Nonetheless, the Cabinet Note shed light on a host of compelling reasons to proceed with the Project, including non-exhaustively:

321.1 Economic Diversification and Growth:

- (a) contribution to 1% of the gross domestic product (**GDP**),⁶⁴⁵ generated through a mere 1% of the total daily natural gas consumption;⁶⁴⁶
- (b) significant economic activities with annual revenues of US \$275 million;⁶⁴⁷
- (c) net present value of the net cash flow projected at US \$425 million over 30 years;⁶⁴⁸ and
- (d) rate of return on equity at 11.5%.⁶⁴⁹

321.2 Employment Opportunities and Income:

- (a) creation of 700 direct jobs, 2,100 indirect community jobs, and 7,000 downstream jobs;⁶⁵⁰ and
- (b) gross employment income at US \$27 million per year.⁶⁵¹

321.3 Gas Utilisation and Energy Monetisation:

- (a) 1% of gas consumption for 1% of the national GDP (as noted above); and

⁶⁴⁴ *Id.* para. 16 (pp. 6-7).

⁶⁴⁵ *Id.* para. 22(a).

⁶⁴⁶ *Id.* paras. 16 (p. 7), 37(a)(ii).

⁶⁴⁷ *Id.* paras. 23, 36 (based on a (low point) London Metal Exchange (**LME**) aluminium price of US \$2,200 per tonne).

⁶⁴⁸ *Id.* paras. 23, 36.

⁶⁴⁹ *Id.* paras. 12, 36 (based on a (low point) LME aluminium price of US \$2,200 per tonne).

⁶⁵⁰ *Id.* para. 22(b).

⁶⁵¹ *Id.* paras. 23, 36.

- (b) more favourable gas usage than other gas-based industries in terms of capital expenditure per unit quantity of gas used as well as industry-competitive return on investment.⁶⁵²

321.4 Termination Costs and Financial Exposure:

- (a) US \$461 million in wasted expenditure / sunk costs on a prorated basis (US \$1 billion plus if not);⁶⁵³
- (b) US \$140 million in loan liabilities;⁶⁵⁴
- (c) US \$500 million in quantified contractual liabilities on a discounted basis (US \$1.3 billion plus if not);⁶⁵⁵ and
- (d) a minimum of US \$14.2 million in other yet-to-be quantified contractual and contingent obligations (termination costs with CMEC being included within this category).⁶⁵⁶

321.5 Uncertainty and Delay of Cost Mitigation: While cost mitigation by sourcing alternative industries could be possible, the gestation period for such alternative industrial projects would lead to a minimum of 2 to 3 years' time lag before any mitigation could take effect.⁶⁵⁷

322. The only holdbacks identified in the Cabinet Note were (a) an averment that the Project (otherwise in compliance with all EMA-prescribed environmental standards) would not be able to meet the 1 µg/m³ HF emission limit in Phase II expansion;⁶⁵⁸ and (b) a

⁶⁵² *Id.* para. 17.

⁶⁵³ *Id.* paras. 39(a)-(b). The expenditure included costs spent on the supporting infrastructure and projects, including the development of the Union Industrial Estate, the TGU power plant, and the port facilities, which had been largely completed by the time of the cancellation of the Project (see para. 4 of the Cabinet Note).

⁶⁵⁴ *Id.* para. 39(c).

⁶⁵⁵ *Id.* paras. 39(e)-(f).

⁶⁵⁶ *Id.* para. 39(d).

⁶⁵⁷ *Id.* para. 40.

⁶⁵⁸ *Id.* para. 21.

reservation that any further development of the Project would depend on the decision of the Court of Appeal.⁶⁵⁹

323. As for the former, this was an incorrect averment. See paragraph 288 above and further explanations in footnote 46 of Annex 4.
324. As for the latter, the statement disregarded the efforts, which were already in train, to re-apply for a new CEC to move forward with the Project. In the context of this fail-safe option, even an unfavourable Court of Appeal judgment (which, however, did not seem likely given the Chief Justice's comments during the hearing) would not have been fatal to the Project.
325. However, notwithstanding all the benefits identified in the Cabinet Note with the continuation of the Project, Mrs Carolyn Seepersad-Bachan emphasised in an interview on 21 July 2010 that "[t]his (*the position paper*) has nothing to do with going back on our decision". Rather, as "*the Government had not flip-flopped on the smelter*" (which she confirmed on 5 July 2010 in advance of the note being prepared⁶⁶⁰), the analysis was for the Cabinet to "*appreciate where [Trinidad and Tobago] stand[s] in terms of our commitment, contractual obligations and possibly expenditure*" in the termination scenario.⁶⁶¹

(c) The State's Announcement of Decision to Terminate the Project

326. On 8 September 2010, the State decided at a Cabinet meeting to discontinue the Project (both the smelter and the downstream facilities) with immediate effect.⁶⁶²
327. On the same day, Mr Winston Dookeran, the then Minister of Finance, renounced the Project in his 2011 budget speech:

"[T]here has been great uncertainty about both the Alutrint and the Rapid Rail projects. There has been much public criticism of these projects rising from legitimate concerns. In addition to the health and environmental risk, there is

⁶⁵⁹ *Id.* para. 36.

⁶⁶⁰ **C-0244**, *Govt pulls plug on smelter*, Trinidad and Tobago Express, 6 July 2010.

⁶⁶¹ **C-0250**, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010.

⁶⁶² **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 114.

*also serious concern as to Alutrint's viability and the optimal use of our gas. This project shall cease and an alternative strategy will be put into place for the south-west peninsula."*⁶⁶³

328. As addressed above, the purported environmental, economic, and gas usage concerns were inconsistent with the analysis in the 16 July 2010 Cabinet Note and none of them were valid.
329. Indeed, the decision as well as the manner in which it was made and delivered evoked much criticism, as well as calls for reconsideration, in Trinidad and Tobago's political arena and broader national community.
330. The then PNM Chairman John Donaldson called on Prime Minister Kamla Persad-Bissessar to reconsider her administration's smelter policy. He cautioned against the repercussions of the "*rush[ed] decision*" to scrap the smelter including tarnished investor confidence in Trinidad and Tobago, and pointed out that it was inapt for the issue to be summarily addressed in the reading of the budget presentation.⁶⁶⁴ His original words spoke well to the point:

*"Concern was raised as to how the other states—China, Brazil and Venezuela—that participated in this very important project (would react), so that our international affairs would be impacted, not to mention of course investor confidence. **If they chose to invest in [Trinidad and Tobago], in the back of their minds perhaps is that at some point in time things could happen which should not happen in a manner in which it happened in respect of the Alutrint Smelter.**"* (emphasis added)⁶⁶⁵

331. The residents of La Brea also staged protests to plead with the People's Partnership Government to reconsider its decision to stop the smelter, highlighting the jobs the Project could create and the infrastructural and social development it could bring to the La Brea community.⁶⁶⁶ Importantly, while a number of environmental activists sought to block the Project through the CEC litigation, the residents of the La Brea community,

⁶⁶³ C-0252, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010.

⁶⁶⁴ C-0253, S. Nero, *PNM: PM should reconsider smelter*, Trinidad and Tobago Guardian, 11 September 2010.

⁶⁶⁵ *Ibid.*

⁶⁶⁶ C-0255, A. Llanos, *'Don't stop the smelter'*, Trinidad and Tobago Guardian, 16 September 2010.

where the smelter was to be located, stood firmly in favour of the Project – only that their voice was heard less because they were "*less vocal*" and "*less well-organised*".⁶⁶⁷

332. Following Parliamentary debate of the budget, the incumbent Prime Minister Keith Rowley, then the Leader of the Opposition, declared that the People's Partnership Government's decision was based on "*purely political considerations*" despite the smelter's economic benefits and the pending Court of Appeal decision.⁶⁶⁸ He made the comments after Energy Minister Carolyn Seepersad-Bachan skirted questions in Parliament about when and why the State decided to shut down the smelter.⁶⁶⁹
333. Similarly, Finance Minister Winston Dookeran was also questioned as to "*why the [TGU] power plant would be underutilized when it's completed or the economics of looking for new industries when one [i.e. aluminium industry] was already being pursued*". He quickly conceded that "*the decision was a campaign promise*" and "*a loss the Government had to accept as well as its legal burden*".⁶⁷⁰
334. Insofar as Alutrint and CMEC were concerned, at this stage, while the State had formally stated its intent to cancel the Project, it gave no instruction to effect that cancellation.

⁶⁶⁷ **C-0334**, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 13 ("*While this decision [to stop the smelter] was lauded by those who opposed the Alutrint project, it was strongly opposed by the less vocal and less well-organized civil society organization, representing residents of the economically depressed community, where the smelter was to be located.*").

⁶⁶⁸ **C-0258**, M. Fraser, *Rowley: Decision to scrap smelter a political move*, Trinidad and Tobago Express, 3 October 2010.

In particular, Prime Minister Keith Rowley noted that "*the court didn't stop it [i.e. the Project], the court said the EMA must redo something with the CEC, and then the government changed. It is the government that stopped it.*": **C-0498**, Address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>, last accessed 18 September 2024); **C-0499**, Transcription of address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>), p. 1.

⁶⁶⁹ **C-0257**, Trinidad and Tobago Hansard, 1 October 2010 (11th Sitting – 1st Session – 10th Republican Parliament), pp. 3, 8; **C-0258**, M. Fraser, *Rowley: Decision to scrap smelter a political move*, Trinidad and Tobago Express, 3 October 2010.

⁶⁷⁰ **C-0254**, A. Javeed, *Stopping smelter comes with legal challenges*, Trinidad and Tobago Guardian, 14 September 2010.

335. Therefore, following a meeting on 27 September 2010, CMEC submitted at the request of Alutrint a proposal for maintenance services in relation to the temporary facilities and construction machinery and equipment on the site⁶⁷¹ (which was approved on 14 February 2011, as discussed below). In view of the indefinite suspension (until a final decision of the State), the site maintenance services preserved the site and its assets and ensured the Project's integrity and readiness for potential resumption.
336. In the meantime, CMEC sought discussions with the State to explore options to enable the resumption of the Project. Some of CMEC's attempts and efforts included:
- 336.1 from 19 to 22 October 2010, CMEC's then Vice President Mr Chaoyang Li visited Trinidad and Tobago to seek meetings with Trinidad and Tobago's Prime Minister, Energy Minister, Finance Minister, and Works and Transport Minister to discuss the future of the Project. Unfortunately, these attempts to arrange a meeting were mostly unsuccessful. Mr Chaoyang Li was only able to meet with Works and Transport Minister Jack Warner on 21 October 2010, which did not yield meaningful results;⁶⁷²
- 336.2 on 22 October 2010, CMEC further wrote to Prime Minister Kamla Persad-Bissessar to express its wish for an opportunity to meet with her and other Ministers in the near future. CMEC reaffirmed its assurance and commitment that the Project would be "*environmentally friendly, economically attractive and using the most advanced technology*", including a commitment to provide welfare facilities for the local community during the construction of the Project. CMEC reiterated its hope that the Kamla Persad-Bissessar administration would support the Project and give a positive direction;⁶⁷³ and
- 336.3 on 30 November 2010, in a letter to the MEEA, CMEC further offered to upgrade the pot technology to NEUI 400kA, which was even more technically and environmentally advanced and economical than the NEUI 330kA technology, at no additional construction cost of the Project. In closing, CMEC

⁶⁷¹ **C-0256**, Letter from CMEC to Alutrint (with attachment) dated 28 September 2010.

⁶⁷² **C-0260**, Letter from CMEC to Alutrint dated 15 October 2010; **C-0261**, Email from N. Yearwood-King to J. Duo and L. Zhang (with attachment) dated 21 October 2010; **C-0262**, Letter from CMEC to Prime Minister K. Persad-Bissessar dated 22 October 2010, p. 1.

⁶⁷³ **C-0262**, Letter from CMEC to Prime Minister K. Persad-Bissessar dated 22 October 2010.

noted that it "highly look[ed] forward to meeting and having technical discussions with [MEEA's] experts on NEUI400KA pot technology as soon as possible".⁶⁷⁴

337. Again, neither letter received any response from the State. CMEC's 400kA proposal went ignored.
338. In the circumstances, CMEC continued to implement the site maintenance services and kept up its correspondence with Alutrint regarding CMEC's claims for the downtime and site maintenance costs.⁶⁷⁵
339. On 14 February 2011, following months of claim investigations and negotiations, Alutrint informed CMEC of its completion of the review of (a) CMEC's downtime claim for two periods of suspension of site activities and (b) CMEC's site maintenance proposal (including as to the number of personnel and their rate of costs) as most recently consolidated in CMEC's 9 December 2010 submission,⁶⁷⁶ and confirmed them to be both "in order".⁶⁷⁷ Alutrint also instructed CMEC to continue executing the site maintenance services until a formal communication from the State on the Project:

"We have reviewed your claims for the suspension of site activities during the periods June 18, 2009 to March 31, 2010, and [May] 25, 2010 to December 31, 2010 and found them to be in order. We have also reviewed and found CMEC's Site Maintenance Proposal to be in order, along with its recommended resources allocated, seven (7) persons, to execute these duties. However, please be reminded that all claims are subject to final approval by the Board of Directors of Alutrint.

Kindly note, Alutrint is diligently seeking a formal communication from the GORTT concerning a decision on our Project. In the interim, CMEC is expected to continue the execution of the Site Maintenance Proposal until

⁶⁷⁴ C-0267, Letter from CMEC to MEEA dated 30 November 2010.

⁶⁷⁵ See, e.g., C-0259, Letter from CMEC to Alutrint (with attachments) dated 5 October 2010; C-0263, Letter from Alutrint to CMEC dated 28 October 2010; C-0027, Letter from Alutrint to CMEC dated 28 October 2010; C-0264, Letter from CMEC to Alutrint (with attachments) dated 8 November 2010; C-0266, Letter from Alutrint to CMEC dated 25 November 2010; C-0029, Letter from CMEC to Alutrint (with attachments) dated 9 December 2010.

⁶⁷⁶ C-0029, Letter from CMEC to Alutrint (with attachments) dated 9 December 2010.

⁶⁷⁷ C-0269, Letter from Alutrint to CMEC (with attachment) dated 14 February 2011, p. 1.

otherwise advised." (emphases added)⁶⁷⁸

340. By this time, as the prospect of the Project being restarted seemed to diminish, CMEC also started to compile and submit its claim for all the remaining uninvoiced works and costs relating to the implementation of the Project.⁶⁷⁹
341. Thereafter and throughout 2011, CMEC kept following up with Alutrint on the payment of the downtime costs, the site maintenance costs, and the uninvoiced items.⁶⁸⁰ However, Alutrint only paid three months' site maintenance services (at the rate agreed by the 14 February 2011 letter) in June 2011,⁶⁸¹ and no payment whatsoever was made since then (to this day).
342. It is pertinent to note that the Board of Alutrint was largely if not entirely non-functioning during this period. As explained by Mr Steve Mohammed, who succeeded Mr Philip Julien as the Acting CEO of Alutrint in November 2011:⁶⁸²

"For the period May 2010 to October, 2011 (a period of 17 months), Alutrint functioned without a Board of Directors. There was no communication from either shareholder to Alutrint regarding its position, although the Company did communicate with its Line Ministry to address its concerns during that period. Notwithstanding the appointment of local Directors in September 2011, there have been no short, medium or long-term mandates from the BOD; and the

⁶⁷⁸ *Ibid.*

⁶⁷⁹ **R-0004**, Letter from CMEC to Alutrint dated 14 February 2011.

⁶⁸⁰ See, e.g., **C-0272**, Letter from CMEC to Alutrint dated 16 February 2011; **C-0271**, Letter from CMEC to Alutrint (with attachments) dated 16 February 2011; **C-0273**, Letter from CMEC to Alutrint (with attachments) dated 18 February 2011; **C-0275**, Letter from CMEC to Alutrint dated 12 April 2011; **C-0276**, Letter from CMEC to Alutrint (with attachments) dated 18 April 2011; **C-0277**, Letter from CMEC to Alutrint (with attachments) dated 20 April 2011; **C-0278**, Letter from CMEC to Alutrint (with attachments) dated 22 April 2011; **C-0279**, Email from L. Zhang to P. Julien (with attachments) dated 25 April 2011; **C-0280**, Letter from CMEC to Alutrint (with attachments) dated 25 April 2011; **C-0281**, Letter from CMEC to Alutrint (with attachments) dated 27 April 2011; **C-0282**, Letter from CMEC to Alutrint (with attachments) dated 29 April 2011; **C-0290**, Letter from CMEC to Alutrint (with attachments) dated 15 August 2011; **C-0291**, Letter from CMEC to Alutrint (with attachments) dated 18 August 2011; **C-0292**, Letter from CMEC to Alutrint (with attachments) dated 23 August 2011; **C-0293**, Letter from CMEC to Alutrint (with attachments) dated 28 August 2011; **C-0294**, Letter from CMEC to Alutrint (with attachments) dated 3 September 2011; **C-0295**, Letter from CMEC to Alutrint dated 5 September 2011; **R-0005**, Letter from CMEC to Alutrint (with attachments) dated 21 September 2011; **C-0299**, Letter from CMEC to Alutrint dated 25 October 2011; **C-0303**, Letter from CMEC to Alutrint (with attachments) dated 14 November 2011; **C-0304**, Letter from CMEC to Alutrint (with attachments) dated 14 November 2011; **C-0305**, Letter from CMEC to Alutrint dated 16 November 2011.

⁶⁸¹ **C-0285**, Alutrint Purchase Order No. 0200/11/005033, dated 16 June 2011; **C-0286**, Alutrint Purchase Order No. 0200/11/005034, dated 16 June 2011; **C-0287**, Alutrint Purchase Order No. 0200/11/005035, dated 16 June 2011.

⁶⁸² For more information about Steve Mohammed, please refer to Note K3 of [Annex 3](#).

*Company is aware that there are Shareholders' issues which remain unresolved."*⁶⁸³

343. Consequently, although CMEC promptly initiated discussions and arranged meetings with Alutrint's new Board after one was in place in September 2011,⁶⁸⁴ it seemed that the new Board was unable to move forward with the resolution of any outstanding payments.
344. In addition, CMEC met with Permanent Secretary Thompson on 26 April 2011 and 20 May 2011,⁶⁸⁵ and Finance Minister Winston Dookeran on 27 November 2011,⁶⁸⁶ to pursue settlement of the submitted payment claims and an early communication from the State on its final decision on the Project.
345. Notably, CMEC's three main payment claims during the 2009 to 2011 suspension (i.e. prior to the final Project termination in January 2012) and their status were clearly summarised in Mr Philip Julien's exit report prepared on or around 30 October 2011:

"With the initial CEC quashing, followed by the project cessation announcements, CMEC has been curtailed in their activities substantially for over 2.5 years. This is in part what has led to the (a) Downtime Claim, (b) the Site Maintenance monthly cost, and (c) the Uninvoiced Amounts presently being sourced [sic].

Items (a) and (b) can be addressed independently to the formal decision of contract cancellation. Even if the project were to have proceeded, these items would still be legitimate issues for remuneration to CMEC. They have already been reviewed and negotiated by Alutrint's Management Team, and board approval of items (a) and (b) should be relatively straightforward.

Note that to one's knowledge, to-date, Alutrint has not received any formal/written instructions to stop the project. This has curtailed Alutrint's efforts to have meaningful conversations with CMEC towards

⁶⁸³ C-0327, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 2.

⁶⁸⁴ See, e.g., C-0299, Letter from CMEC to Alutrint dated 25 October 2011; C-0301, Letter from CMEC to Alutrint dated 3 November 2011; C-0302, Emails between L. Zhang and P. Julien from 8 November 2011 to 9 November 2011; C-0305, Letter from CMEC to Alutrint dated 16 November 2011. Alutrint notified CMEC of GORTT's appointment of the new Board on 14 October 2011: C-0297, Letter from Alutrint to CMEC dated 14 October 2011.

⁶⁸⁵ C-0283, Emails between N. Yearwood-King and L. Zhang dated 19 May 2011.

⁶⁸⁶ C-0306, Photo of meeting between Mr Winston Dookeran, then Minister of Finance of Trinidad and Tobago, and CMEC on 27 November 2011 at the Ministry of Finance.

project/contract termination, as well as addressing item (c) above. While the Contract does have specific terms regarding contract termination, it is unclear whether CMEC will be seeking legal grounds to redress the situation.

[...]

One should note that CMEC has formally communicated to GORTT of their continued belief in the feasibility and safety of their project offering, as well as proposing solutions. One should not therefore fully rule out the possibility of some form of legal action, if a diplomatic solution cannot be reached." (emphases added)⁶⁸⁷

346. In his report, Mr Philip Julien further recommended that "*CMEC's Downtime Claim and Site Maintenance Costs be actively considered for disbursement approval, on the basis of the Alutrint Management Team's completed review*".⁶⁸⁸ Indeed, the US \$3,988,539 downtime claim submitted by CMEC on 9 December 2010⁶⁸⁹ (without yet reflecting the costs of the continuing site maintenance services until the end of 2011) was listed as "*Claims Accepted by Alutrint*" in Alutrint's internal claim evaluation document.⁶⁹⁰
347. Having been contemporaneously reviewed, investigated, negotiated and accepted, the downtime and site maintenance part of CMEC's claim should be treated as agreed.
348. It bears reiteration that CMEC continued the site maintenance services for over a year rather than immediately terminating the EPC Contracts because the State sat on its decision to terminate the Project without giving any formal instruction to Alutrint or directly to CMEC. As instructed by Alutrint, CMEC in good faith continued its investment in the Project in order to preserve the possibility of recommencement if and when the suspension was lifted.

(d) EMA's Withdrawal of Appeal Against the 2009 High Court Decision

349. As a fallout of the State's public renunciation of the Project in September 2010, many considered it moot to await the pending Court of Appeal judgment.

⁶⁸⁷ C-0300, Exit Report from Alutrint Acting CEO Philip Julien as of 30 October 2011, p. 4 (under s. 4(b)(ii)).

⁶⁸⁸ *Id.* p. 7 (under s. 5(a)).

⁶⁸⁹ C-0029, Letter from CMEC to Alutrint (with attachments) dated 9 December 2010, p. 3.

⁶⁹⁰ C-0307, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, p. 13.

350. On 23 May 2011, the EMA filed a motion to discontinue the appeal.⁶⁹¹
351. On 4 July 2011, the EMA was granted leave to discontinue the appeal.⁶⁹²
352. Douglas Mendes SC, who appeared for the EMA at the Court of Appeal of Trinidad and Tobago, explained that the EMA initially filed the appeal because they did not agree with the High Court Decision, but "*now that the issue of the construction of the smelter plant was no longer an issue, they want to have their appeal withdrawn*".⁶⁹³
353. Professor Kenneth Julien, former NGETF Chairman, opined that the EMA's decision to withdraw the appeal was influenced by "*the advice of the Government*".⁶⁹⁴
354. Alutrint and the EMA gave no prior notice to CMEC of the intention to withdraw the appeal and failed to inform CMEC of the withdrawal after it was made, which unnecessarily caused CMEC to continue its efforts to provide support and solutions for issues raised in the appeal well into 2011. For example, on 28 March 2011, CMEC was still offering technical suggestions on the disposal of SPL.⁶⁹⁵
355. It remains a mystery to CMEC why the Court of Appeal of Trinidad and Tobago had rendered no judgment for as long as 20 months (from the conclusion of the appeal hearing in November 2009 until the EMA's withdrawal of the appeal in July 2011), especially given the Chief Justice's initial appreciation of the urgency of the matter and his indication that the judgment would be given as soon as possible.

(e) The State's Instruction to Terminate the Project

356. On 9 January 2012, Mr Leroy Mayers, Permanent Secretary of the MEEA, wrote to Alutrint, relaying the State's decision to discontinue the Project pursuant to the "*articulated intention*" in September 2010:

"I wish to refer to Government's articulated intention in the September 2010

⁶⁹¹ **C-0284**, D. Renne, *EMA to discontinue appeal against Alutrint*, Trinidad and Tobago Express, 15 June 2011.

⁶⁹² **C-0288**, *EMA gets leave to quit appeal*, Trinidad and Tobago Express, 4 July 2011.

⁶⁹³ **C-0289**, J. Loutoo, *Smelter withdrawn, EMA withdraws appeal*, Trinidad and Tobago Newsday, 12 July 2011.

⁶⁹⁴ **C-0387**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Post-Hearing Brief, 3 October 2014, para. 8.1.

⁶⁹⁵ **C-0274**, Letter from CMEC to Alutrint dated 28 March 2011.

Budget Presentation to discontinue the Alutrint Smelter Project.

I wish to advise that pursuant to the above position Government agreed that the Alutrint Smelter Project at Union Industrial Estate, La Brea be discontinued with immediate effect.

Please be guided accordingly."⁶⁹⁶

357. On 19 January 2012, Alutrint notified CMEC that it had received formal notification on 9 January 2012 to discontinue the Project and that CMEC should accordingly "*cease all works and activities pertaining to Alutrint Aluminium Smelter Project*".⁶⁹⁷
358. On 23 January 2012, Alutrint further notified CMEC "*to demobilise completely all CMEC's assets (including equipment and materials) from the Project Site in La Brea and remove*" those assets.⁶⁹⁸
359. It later transpires that, around this time, Alutrint prepared an internal presentation on its estimate of the financial exposure to CMEC.⁶⁹⁹ This presentation estimated a total liability to CMEC of US \$32 million.⁷⁰⁰ The Claimant disputes this amount as a severe underestimate. It is however notable that Alutrint and the State had acknowledged substantial liabilities to CMEC from at least the time of, if not well before, the January 2012 termination of the Project.
360. Pursuant to Alutrint's notices dated 19 and 23 January 2012, CMEC promptly mobilised resources for the carrying out of the demobilisation ⁷⁰¹ and submitted detailed

⁶⁹⁶ **C-0308**, Letter from MEEA to Alutrint dated 9 January 2012.

⁶⁹⁷ **C-0030**, Letter from Alutrint to CMEC dated 19 January 2012.

⁶⁹⁸ **C-0031**, Letter from Alutrint to CMEC dated 23 January 2012.

⁶⁹⁹ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012. This document was extracted from **C-0328**, Agenda and package of documents for Alutrint Board Meeting No. 2012-02 to be held on 5 June 2012, pp. 44-57. It was included within the Board meeting package as an attachment to Mr Steve Mohammed's status report of Alutrint's operations for the period of November 2011 to May 2012 (**C-0328**, pp. 26-32). Mr Steve Mohammed stated in his status report, under the section of "*Recent Developments*", that "[a] presentation on Alutrint's financial exposure with CMEC was made to the Chairman in January, 2012" (**C-0328**, p. 31).

⁷⁰⁰ **C-0307**, Alutrint's Internal Estimate of Financial Exposure to CMEC, January 2012, p. 14.

⁷⁰¹ See, e.g., **C-0309**, Letter from CMEC to Alutrint dated 15 February 2012; **C-0310**, Letter from CMEC to Alutrint dated 22 February 2012; **C-0314**, Letter from CMEC to Alutrint dated 9 March 2012; **C-0316**, Letter from CMEC to Alutrint dated 15 March 2012.

demobilisation proposals.⁷⁰² As set out in its 14 May 2012 letter, CMEC proposed a two-phase demobilisation: a first phase (Phase I) concerning the removal of equipment and materials to be shipped to Venezuela (for use in another CMEC project therefore mitigating the loss), followed by a second phase (Phase II) concerning the removal and disposal of temporary facilities and other remaining equipment and materials locally.⁷⁰³

361. After experiencing some difficulties in obtaining visa approvals,⁷⁰⁴ on 2 June 2012, six CMEC personnel arrived in Trinidad and Tobago and took residence on the site to begin preparations for demobilisation.⁷⁰⁵
362. CMEC's demobilisation activities however met with obstruction by the staff at Alutrint, which only improved after the Alutrint Board belatedly approved and authorised the demobilisation on 30 July 2012.⁷⁰⁶ This disrupted CMEC's planned Phase I shipping schedule and caused it to incur additional costs.⁷⁰⁷ The cargo for the Venezuela project ended up departing Trinidad and Tobago on 5 September 2012 and arriving in Venezuela on 7 September 2012.⁷⁰⁸
363. As the Phase I demobilisation was drawing to a close, in August to September 2012, CMEC started to prepare for⁷⁰⁹ and offered to commence the Phase II demobilisation as soon as it received the advance payment from Alutrint.⁷¹⁰ However, contrary to its 23 January 2012 Notice to Demobilise and despite CMEC's emphasis that costs would continue to be incurred until the site was completely cleared,⁷¹¹ Alutrint did not give

⁷⁰² See, e.g., **C-0312**, Letter from CMEC to Alutrint dated 8 March 2012; **C-0313**, Letter from CMEC to Alutrint dated 9 March 2012; **C-0321**, Letter from CMEC to Alutrint (with attachments) dated 18 April 2012; **C-0324**, Letter from CMEC to Alutrint (with attachments) dated 14 May 2012.

⁷⁰³ **C-0324**, Letter from CMEC to Alutrint (with attachments) dated 14 May 2012.

⁷⁰⁴ See, e.g., **C-0317**, Letter from CMEC to Alutrint dated 15 March 2012; **C-0321**, Letter from CMEC to Alutrint (with attachments) dated 18 April 2012, p. 1.

⁷⁰⁵ **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 6.

⁷⁰⁶ **C-0335**, Letter from Alutrint to CMEC dated 3 August 2012

⁷⁰⁷ **C-0336**, Letter from CMEC to Alutrint dated 3 August 2012.

⁷⁰⁸ **C-0339**, Letter from CMEC to Alutrint (with attachments) dated 10 September 2012.

⁷⁰⁹ **C-0337**, Letter from CMEC to Alutrint (with attachment) dated 29 August 2012.

⁷¹⁰ **C-0338**, Letter from CMEC to Alutrint dated 4 September 2012, p. 1 ("*The demobilization activities will be conducted once we receive the advance payment from Alutrint.*").

⁷¹¹ **C-0340**, Letter from CMEC to Alutrint dated 17 October 2012, p. 3 (CMEC highlighting that "*time is of the essence in this matter as costs are being incurred by both parties until the site is completely cleared*").

CMEC permission to proceed with the Phase II demobilisation until April 2013⁷¹² (discussed below).

364. During the demobilisation period, CMEC also continued to regularly follow up on the payment for its claims for downtime, site maintenance, and uninvoiced items.⁷¹³ These efforts included reaching out to and meeting with Mr Larry Howai, who replaced Mr Winston Dookeran as the new Minister of Finance and the Economy in June 2012,⁷¹⁴ to seek his intervention to expedite the payments.⁷¹⁵
365. Further, as the Phase I demobilisation costs became available, CMEC promptly prepared and submitted a consolidated statement of claim (as updated) encompassing previously submitted claims as well as further claims arising upon and after the termination of the Project.⁷¹⁶
366. Overall, the progress was limited in 2012 – despite continuous follow-ups and requests for payments from CMEC, the State and Alutrint made minimal headway in settling outstanding financial obligations; furthermore, the absence of clear permission to proceed with the second phase of demobilisation contributed to the stagnation of the Project's conclusion. As CMEC noted in its 28 November 2012 letter, *"despite our repeated [payment] requests, no effort has been made to settle outstanding obligations and we are also still awaiting permission to clear the site of all construction equipment and materials"*.⁷¹⁷
367. Mr Steve Mohammed suggested the reason to be Alutrint's lack of authorisation to terminate the EPC Contracts only after which would it commence negotiations with CMEC. He stated in his June 2012 status report, which was submitted to both Alutrint's

⁷¹² **C-0346**, Letter from Alutrint to CMEC dated 18 April 2013.

⁷¹³ See, e.g., **C-0311**, Letter from CMEC to Alutrint dated 29 February 2012; **C-0330**, Letter from CMEC to Alutrint dated 13 July 2012.

⁷¹⁴ **C-0329**, *Breaking News - JACK NEW MINISTER OF NATIONAL SECURITY*, Trinidad and Tobago Express, 21 June 2012, p. 2; **C-0569**, Parliamentary biography of Larry Howai (consolidated), p. 1.

⁷¹⁵ **C-0331**, Letter from CMEC to Finance Minister L. Howai (with attachment) dated 31 July 2012; **C-0332**, Photo of meeting between Mr Larry Howai, then Minister of Finance and the Economy of Trinidad and Tobago, and CMEC on 31 July 2012 at the Ministry of Finance.

⁷¹⁶ **R-0006**, Letter from CMEC to Alutrint (with attachment) dated 4 September 2012; **C-0032**, Letter from CMEC to Alutrint (with attachments) dated 28 November 2012.

⁷¹⁷ **C-0032**, Letter from CMEC to Alutrint (with attachments) dated 28 November 2012, p. 1.

Board and the MEEA, that "*when authorisation is received to terminate contracts including the Alutrint/CMEC EPC Contract, negotiations will be held to determine the final amount owed to CMEC*".⁷¹⁸

368. Relevantly, in or around early May 2012, Mr Selwyn Lashley was appointed the new Permanent Secretary of the MEEA.⁷¹⁹ On 10 May 2012, Alutrint met with Mr Selwyn Lashley to provide an update on the status of the company.⁷²⁰ As discussed below, Mr Selwyn Lashley thereafter participated in the governmental committees established to review and negotiate CMEC's claim in both the Kamla Persad-Bissessar administration and the Keith Rowley administration.

(f) CMEC's Notice of Termination of the EPC Contracts

369. Mindful of such impasse in the payment negotiations, on 19 and 22 March 2013, Mr Jinhai Duo, Mr Burt Rochford, Mr Ian Anthony, and Mr Ling Zhang (all on behalf of CMEC) attended Alutrint's office for meetings with Alutrint's Ms Colleen Murray, Mr Hayden DuPont, and Mr Adrian Bernard to discuss "*an approach to terminating the EPC contract*" and certain deliverables to be submitted by CMEC to support its claim.⁷²¹ In addition, CMEC requested written confirmation to proceed with the Phase II demobilisation noting that on several occasions CMEC after being asked by Alutrint to demobilise was then not allowed to proceed.⁷²²
370. At the conclusion of the meeting on 22 March 2013, CMEC delivered to Alutrint by hand a pre-prepared Notice of Termination dated 1 March 2013.⁷²³ CMEC did so on the

⁷¹⁸ **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 3 (in addition to being a Board paper, Mr Steve Mohammed noted that "[t]he above summary was submitted to the MOEEA [i.e. MEEA] on 1st June, 2012").

⁷¹⁹ **C-0323**, *Energy Ministry gets new PS*, Trinidad and Tobago Guardian, 2 May 2012.

⁷²⁰ **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 6.

⁷²¹ **C-0345**, Email from C. Murray to J. Duo (with attachment) dated 4 April 2013, p. 1 (in which Ms Colleen Murray provided a summary of the 19 and 22 March 2013 meetings).

⁷²² **C-0344**, Letter from CMEC to Alutrint dated 2 April 2013 ("*[w]ith reference to the meeting held in Alutrint Office on the date of March 22nd, 2013, with you and your team concerning Phase II demobilization work of Alutrint Smelter Project*"); **C-0034**, Letter from CMEC to Alutrint dated 10 April 2013, p. 1 (CMEC adding that "[a]s discussed in our recent meetings, we await your written confirmation to demobilise").

⁷²³ **C-0343**, Letter from CMEC to Alutrint dated 1 March 2013; **C-0034**, Letter from CMEC to Alutrint dated 10 April 2013, p. 1 (in clarifying the date of the Notice of Termination, CMEC explained that it had made the decision to terminate the EPC Contracts on the ground of prolonged suspension in February 2013, but

basis of the Project having suffered a prolonged suspension, in order to "*allow the demobilisation to proceed, the claim to be successfully negotiated and paid and will also allow for the complete closure of the project*".⁷²⁴

371. On 2 April 2013, CMEC notified Alutrint that it had appointed Mr Ian Anthony (of Renavatio Servicio Ltd) as CMEC's local executive for the Phase II demobilisation works, as well as CMEC's legal consultant on the claim issue related to the Project.⁷²⁵
372. On 4 April 2013, Ms Colleen Murray asked that CMEC direct correspondence to her attention in her capacity as Company Secretary, noting that Mr Philip Julien and Mr Steve Mohammed had respectively left Alutrint in November 2011 and February 2013.⁷²⁶ CMEC therefore re-dispatched its Notice of Termination, addressing Ms Colleen Murray only.⁷²⁷
373. Also on 4 April 2013, in anticipation of CMEC's compilation of its engineering claim as discussed in the March meetings,⁷²⁸ Ms Colleen Murray instructed Hatch to provide the following three-phase services in relation to CMEC's completed preliminary and detailed engineering:

"Phase 1: Hatch to determine a range for engineering cost as percentage of contract value based on industry standard for the project. The engineering is based on the requirement of the EPC Contract and Technical Specifications already submitted.

Phase 2: A 'bottom-up' assessment of the engineering performed by CMEC and the associated cost to be performed in China when CMEC's claims are received.

Phase 3: Participation of a Contract Specialist to support negotiation process

"delayed service until after [the] meeting on March 22nd [2013]" which was "[i]n the interest of maintaining cordial relations between CMEC and Alutrint").

⁷²⁴ **C-0034**, Letter from CMEC to Alutrint dated 10 April 2013, p. 1.

⁷²⁵ **C-0344**, Letter from CMEC to Alutrint dated 2 April 2013. See also **C-0349**, Letter from CMEC to Alutrint dated 14 May 2013.

⁷²⁶ **C-0345**, Email from C. Murray to J. Duo (with attachment) dated 4 April 2013, p. 1.

⁷²⁷ **C-0033**, Letter from CMEC to Alutrint dated 10 March 2013. This letter was mistakenly dated "March 10th, 2013". Except for the change in the addressee and the inadvertent typographical error of the date, this letter is identical to CMEC's originally delivered Notice of Termination dated 1 March 2013.

⁷²⁸ **C-0034**, Letter from CMEC to Alutrint dated 10 April 2013, p. 2 ("*With respect to the deliverables referred to in your email [of 4 April 2013], CMEC is presently compiling the design and engineering part of the claim as requested and agreed to.*").

with CMEC."⁷²⁹

374. On 18 April 2013, Alutrint gave notice to commence the Phase II demobilisation in accordance with a specified scope of works.⁷³⁰
375. On 22 April 2013, CMEC submitted a detailed explanatory letter elaborating on its engineering claim, accompanied by supporting documents for each major phase of the design.⁷³¹
376. On 14 May 2013, following a site visit on 24 April 2013 to review the requested demobilisation scope and assess the site status,⁷³² CMEC advised Alutrint that it was prepared to proceed with the demobilisation on the basis of the given scope upon receiving Alutrint's go-ahead.⁷³³
377. On 17 May 2013, CMEC submitted an updated consolidated statement of claim, which incorporated the prior claim submissions (including explanatory letters) and included the estimated Phase II demobilisation costs.⁷³⁴ At a high-level, CMEC's claims include, non-exhaustively, amounts payable for works carried out and associated costs, downtime costs, site maintenance costs, demobilisation costs, and other financial losses (including loss of profit). Alutrint acknowledged receipt of the claim letter on 23 May 2013.⁷³⁵
378. On 29 May 2013, CMEC further submitted a CD containing the full suite of supporting documents organised in accordance with the 17 May 2013 claim letter.⁷³⁶ The submission included over 3,000 documents arranged into easy-to-follow folders and

⁷²⁹ **C-0601**, Draft Hatch Phase 1 Report, p. 2.

⁷³⁰ **C-0346**, Letter from Alutrint to CMEC dated 18 April 2013.

⁷³¹ **C-0347**, Letter from CMEC to Alutrint dated 22 April 2013. The engineering deliverables submitted with this letter were later (re-)included in the full suite of supporting documents submitted to Alutrint on 29 May 2013 (see paragraph 378 below).

⁷³² **C-0348**, Letter from CMEC to Alutrint dated 24 April 2013.

⁷³³ **C-0349**, Letter from CMEC to Alutrint dated 14 May 2013, p. 1.

⁷³⁴ **C-0035**, Letter from CMEC to Alutrint (with attachments) dated 17 May 2013.

⁷³⁵ **C-0350**, Letter from Alutrint to CMEC dated 23 May 2013.

⁷³⁶ **C-0351**, Letter from CMEC to Alutrint dated 29 May 2013.

sub-folders.⁷³⁷

379. On 25 June 2013, Alutrint acknowledged receipt of the supporting documents and informed CMEC that as soon as ready Alutrint would give notice of a verification exercise of the design documents to be performed in China by its consultant, Hatch⁷³⁸ (which appears to coincide with Phase 2 of Hatch's services).
380. On 8 July 2013, CMEC proposed that Alutrint and CMEC take the opportunity of the design verification exercise to simultaneously start the claim negotiations in China and suggested a start date for this exercise on 10 August 2013.⁷³⁹
381. On 2 October 2013, Alutrint informed CMEC that it had finalised arrangements with Hatch to begin the design verification exercise on 9 or 10 October 2013. In addition, Alutrint's then Chairman, Ms Sushma Gopeesingh, along with Engineer Mr Dave Baijoo, would also arrive in Beijing to visit CMEC on 9 October 2013, departing on 15 October 2013.⁷⁴⁰
382. On 9 October 2013, a meeting between the Alutrint delegation and CMEC was held at CMEC's Beijing headquarters to kickstart the (long-awaited) claim negotiations.⁷⁴¹
383. At the same time or shortly after the aforementioned meeting in Beijing, a Hatch team⁷⁴² came to NEUI's office in Shenyang, China to review and verify the design documents completed for the Project (including proprietary and other drawings, calculation sheets, etc.).⁷⁴³ Hatch's onsite assessment lasted for approximately one week, resulting in NEUI and Hatch signing the "*Contents of Design & Services*" on 16 October 2013 to record

⁷³⁷ **C-0352**, Screenshots of folders of supporting documents submitted on 29 May 2013; **C-0353**, Full list of supporting documents submitted on 29 May 2013.

⁷³⁸ **C-0355**, Letter from Alutrint to CMEC dated 25 June 2013.

⁷³⁹ **C-0357**, Letter from CMEC to Alutrint dated 8 July 2013.

⁷⁴⁰ **C-0361**, Letter from Alutrint to CMEC dated 2 October 2013.

⁷⁴¹ **C-0362**, Photo of meeting between Alutrint and CMEC on 9 October 2013 in Beijing, China.

⁷⁴² The Hatch team was led by Mr Simon (Shimin) Pan, then a Director of the Light Metals Department in Hatch Shanghai. Mr Pan signed the "*Contents of Design & Services*" on behalf of Hatch. For more information about Mr Pan, see **C-0505**, 2023 Annual Report of China Uptown Group Company Limited dated 26 April 2024, p. 18 ("*[Mr Pan] has over twenty years of corporate and project management experience. Mr. Pan obtained his bachelor's degree in engineering from the Northeastern University in the Peoples' Republic of China in 1994. He was a director of the light metals department of HATCH Project Consulting (Shanghai) Co., Ltd. from August 2011 to September 2014.*").

⁷⁴³ Witness Statement of Qingchen Yang, para. 40.

the scope of the deliverables reviewed by Hatch.⁷⁴⁴ Hatch submitted an evaluation report of CMEC's engineering claim to GORTT shortly thereafter.⁷⁴⁵

384. However, CMEC received no further update from Alutrint and the claim negotiations once again stalled.
385. As for the Phase II demobilisation in Trinidad and Tobago, after accommodating further requirements and procedures imposed by Alutrint, CMEC commenced demobilisation on 2 July 2013 by removing the first container.⁷⁴⁶ For a number of reasons including the lack of funds (due to Alutrint's failure to make any payment) and discussions with Trinidad and Tobago's Ministry of Social Development and Family Services which expressed an interest in purchasing the site remaining prefabricated buildings and sewerage system,⁷⁴⁷ the demobilisation continued until September 2014 when NEC took over the site.⁷⁴⁸

E.9 CMEC's Persistent Pursuit of the Payment Claim

(a) Overview

386. As has been partly addressed in the above sections, the table below summarises CMEC's requests for payments at different stages of the Project (excluding payment requests on a number of settled contracts).

⁷⁴⁴ **C-0363**, Contents of Design & Services (with attachments) signed by NEUI and Hatch on 16 October 2013.

⁷⁴⁵ **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015, pp. 1-2; **C-0404**, Letter from CMEC to Finance Minister C. Imbert dated 24 September 2015, p. 2; **C-0405**, Letter from CMEC to Energy Minister N. Olivierre dated 24 September 2015, p. 2.

⁷⁴⁶ See, e.g., **C-0356**, Letter from Renavatio to Alutrint dated 1 July 2013, p. 2 ("*CMEC intends to start the demobilization by removing one container tomorrow*"); **C-0358**, Letter from Alutrint to CMEC dated 12 July 2013 ("*Alutrint acknowledges that the demobilization formally started on July 2, 2013*"); **C-0359**, Letter from CMEC to Alutrint (with attachments) dated 18 July 2013, p. 2 ("*The first container was removed from site on July 2nd, 2013*").

⁷⁴⁷ **C-0377**, Letter from CMEC to Alutrint dated 5 June 2014.

⁷⁴⁸ **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015, p. 1; **C-0404**, Letter from CMEC to Finance Minister C. Imbert dated 24 September 2015, p. 1; **C-0405**, Letter from CMEC to Energy Minister N. Olivierre dated 24 September 2015, p. 1; **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 119 (internal page reference 549); **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

TYPE OF PAYMENT REQUESTS	PERIOD OF REQUEST			
	First suspension Jun 09	Second suspension May 10	Project termination Jan 12	Contract termination Mar 13
Mobilisation / advance payments ⁷⁴⁹	From March 2006 to May 2010			
Progress payments ⁷⁵⁰	From June 2009 to July 2010			
Not fully compensated progress has been included within CMEC's consolidated payment claim after the termination. All received advance and progress payments have been deducted from the claim.				
Downtime costs ⁷⁵¹		Since May 2010		
Site maintenance costs ⁷⁵²		Since February 2011		
Uninvoiced amounts (for works carried out and related costs) ⁷⁵³		Since February 2011		
Downtime, site maintenance, and uninvoiced items were submitted and pursued as separate claims before the termination of the Project, after which they were all included within CMEC's consolidated payment claim.				
Consolidated claim (with demobilisation and other termination costs included) ⁷⁵⁴				Since September 2012  Completion of Phase I demobilisation
CMEC's consolidated payment claim after the termination of the Project encompassed the previously submitted claims and further claims arising upon and after the termination, after deducting the amounts of received advance and progress payments.				

⁷⁴⁹ First mobilisation payment invoice: **C-0084**, Invoice No. 26T10341208 (request of US \$6 million mobilisation fee), dated 31 March 2006; last mobilisation payment invoice: **C-0231**, Invoice No. 201005TD001 (request of US \$5 million mobilisation fee), dated 11 May 2010.

⁷⁵⁰ First progress payment invoice: **C-0183**, Invoice No. 0906TD03001, dated 9 June 2009; last progress payment invoice: **C-0246**, Invoice No. 1007TD07002, dated 9 July 2010 (initially requested in **C-0235**, Letter from CMEC to Alutrint dated 26 May 2010).

⁷⁵¹ First submission of downtime claim: **C-0230**, Letter from CMEC to Alutrint dated 10 May 2010 (following notification in **C-0186**, Letter from CMEC to Alutrint dated 24 June 2009).

⁷⁵² First site maintenance invoice: **C-0271**, Letter from CMEC to Alutrint (with attachments) dated 16 February 2011; **C-0273**, Letter from CMEC to Alutrint (with attachments) dated 18 February 2011 (as updated and corrected). From April 2011, as requested by Alutrint, CMEC re-issued the site maintenance invoices on a monthly basis: see, e.g., **C-0276**, Letter from CMEC to Alutrint (with attachments) dated 18 April 2011.

⁷⁵³ First submission of uninvoiced amounts: **R-0004**, Letter from CMEC to Alutrint dated 14 February 2011.

⁷⁵⁴ Consolidated statement of claim in Phase I demobilisation: **R-0006**, Letter from CMEC to Alutrint (with attachment) dated 4 September 2012; **C-0032**, Letter from CMEC to Alutrint (with attachments) dated 28 November 2012 (as updated).

Consolidated statement of claim in Phase II demobilisation: **C-0035**, Letter from CMEC to Alutrint (with attachments) dated 17 May 2013.

387. Thereafter, CMEC has been updating its statement of claim from time to time to reflect accrued interest and overhead.⁷⁵⁵ The updated claim submissions include CMEC's letters of 21 March 2014,⁷⁵⁶ 23 September 2014,⁷⁵⁷ 23 January 2015,⁷⁵⁸ 6 August 2015,⁷⁵⁹ 15 April 2016,⁷⁶⁰ 24 August 2016,⁷⁶¹ 31 July 2019,⁷⁶² 17 January 2020,⁷⁶³ and 15 August 2022.⁷⁶⁴
388. In addition, as mentioned above, CMEC compiled and submitted over 3,000 claim supporting documents to Alutrint in May 2013. These supporting documents were also directly and formally submitted to the MEEA/MEEI,⁷⁶⁵ the MOF,⁷⁶⁶ the Office of the Prime Minister, and the Office of the Attorney General and Legal Affairs.⁷⁶⁷
389. Moreover, on numerous occasions, CMEC expressed full willingness and readiness to provide any further information, documents or clarifications upon request.⁷⁶⁸
390. Furthermore, over the past decade, CMEC has arranged and attended multiple meetings

⁷⁵⁵ The (wasted) management time and costs in pursuing the payment claim will form part of the Claimant's cost of dispute to be claimed in this arbitration.

⁷⁵⁶ **C-0036**, Letter from CMEC to Alutrint (with attachment) dated 21 March 2014.

⁷⁵⁷ **C-0037**, Letter from CMEC to Alutrint (with attachment) dated 23 September 2014.

⁷⁵⁸ **C-0038**, Letter from CMEC to Alutrint (with attachment) dated 23 January 2015.

⁷⁵⁹ **C-0039**, Letter from CMEC to Alutrint (with attachment) dated 6 August 2015.

⁷⁶⁰ **C-0040**, Letter from CMEC to Alutrint (with attachment) dated 15 April 2016.

⁷⁶¹ **C-0041**, Letter from CMEC to Alutrint (with attachment) dated 24 August 2016.

⁷⁶² **R-0007**, Letter from CMEC to Alutrint (with attachment) dated 31 July 2019.

⁷⁶³ **C-0043**, Letter from CMEC to Alutrint (with attachment) dated 17 January 2020.

⁷⁶⁴ **C-0044**, Letter from CMEC to Alutrint (with attachment) dated 15 August 2022.

⁷⁶⁵ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 119 (internal page reference 549) ("*Claim documents were formerly submitted to Ministry of Energy and Energy Affairs and Alutrint in May 2013*").

⁷⁶⁶ **C-0042**, Letter from CMEC to MOF dated 19 March 2017 ("*As your request, we complied the relative documents about the claim issue again and hereby submit a soft copy and a hard copy*").

⁷⁶⁷ **C-0439**, Letter from CMEC to Minister S. Young dated 17 May 2017 ("*The related documents on the claim issue is enclosed by our representative of Trinidad and Tobago, Mr. Zhang Ling. Please refer to them accordingly.*"). Mr Stuart Young was at the time a Minister in the Office of the Attorney General and Legal Affairs and a Minister in the Office of the Prime Minister: **C-0572**, Parliamentary biography of Stuart Young (consolidated), p. 3.

⁷⁶⁸ See, e.g., **C-0035**, Letter from CMEC to Alutrint (with attachments) dated 17 May 2013, p. 2 ("*Our representatives remain available to meet with you and provide you with any further clarifications that you may require.*"); **C-0042**, Letter from CMEC to MOF dated 19 March 2017 ("*If you need any more documents or information, please feel free to contact us, and we will be right here in Trinidad and work closely with your team.*"); **C-0473**, Letter from CMEC to Finance Minister C. Imbert (with attachments) dated 20 January 2020 ("*Should Your Excellency need more information, please feel free to contact us.*").

with high-level Government Ministers during their official visits to China, as well as dispatched its own delegations to visit Trinidad and Tobago specifically to pursue negotiations on the payment claim related to the Project (discussed below). For this purpose, CMEC has also maintained a local office at #8 Bimitti Road, Valpark Park South, Valsayn (which was initially leased in connection with the operation of CESL⁷⁶⁹) as the liaison point for claim related matters.

391. Indeed, the payment-related communications and dealings in relation to the Project between CMEC, on the one hand, and the State, Alutrint, and other State agencies and/or representatives, on the other hand, spanned nearly two decades. This includes an extensive post-termination timeline which reflects CMEC's claim follow-ups, calls for negotiations, proposals for settlement, dispute resolution attempts, and other payment pursuit efforts, as well as the State's assurances, representations, and other liability-acknowledging statements and actions. Many these events are recorded or reflected in contemporaneous documents.

392. In sum, CMEC has persistently and diligently pursued its claims throughout the years, and the State has been put on ample, repeated notice of the same.

(b) Settlement Discussions with UNC-led Government

393. Following CMEC's claim submission in 2013, on 13 February 2014, the Cabinet agreed to appoint a committee to review CMEC's claims and to develop recommendations for a negotiated settlement.⁷⁷⁰

394. On 18 February 2014, CMEC issued a formal meeting request letter to the then Energy Minister Kevin Ramnarine, who took over the MEEA from Carolyn Seepersad-Bachan in June 2011,⁷⁷¹ inviting him to a courtesy meeting with CMEC's President and Vice President during his official visit to China later that month.⁷⁷² The Trinidad and Tobago delegation for this official China visit was led by Prime Minister Kamla Persad-Bissessar and comprised Mr Kevin Ramnarine, Mr Vasant Barath (the then Minister of

⁷⁶⁹ C-0233, Lease Agreement between Zamina Ali and CESL dated 13 May 2010.

⁷⁷⁰ C-0045, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

⁷⁷¹ C-0568, Parliamentary biography of Kevin Ramnarine (consolidated), p. 2.

⁷⁷² C-0370, Letter from CMEC to Energy Minister K. Ramnarine dated 18 February 2014.

Trade, Industry and Investments), and Mr Winston Dookeran (the then Minister of Foreign Affairs).⁷⁷³

395. The meeting between CMEC and Mr Kevin Ramnarine, accompanied by a few other State officials (including Mr Frank Look Kin, then an Advisor to the MEEA⁷⁷⁴), was held in Beijing on 26 February 2014.⁷⁷⁵ Mr Kevin Ramnarine assured CMEC at the meeting that a team appointed by the State would conclude the claim negotiations with CMEC "*in the shortest time*" and before the end of June 2014.⁷⁷⁶

396. In March 2014, the State established the working team that was tasked to review and settle CMEC's claim.⁷⁷⁷ The working team comprised four Ministers and other non-Minister members as follows:⁷⁷⁸

396.1 Minister members: Mr Kevin Ramnarine (Energy Minister),⁷⁷⁹ Mr Larry Howai (Finance Minister),⁷⁸⁰ Mr Vasant Barath (Trade Minister),⁷⁸¹ and Mr Anand Ramlogan (Attorney General);⁷⁸² and

⁷⁷³ **C-0371**, Trinidad and Tobago Office of the Prime Minister, *PM Kamla leaves for Official Visit to China*, 19 February 2014, <https://unctt.org/pm-kamla-leaves-for-official-visit-to-china/> (last accessed 6 April 2022).

⁷⁷⁴ **C-0545**, LinkedIn Profile of Frank Look Kin, <https://www.linkedin.com/in/frank-look-kin-4622b441/> (last accessed 3 September 2024).

⁷⁷⁵ **C-0372**, Photos of meeting between Mr Kevin Ramnarine, then Minister of Energy and Energy Affairs of Trinidad and Tobago, and CMEC on 26 February 2014 in Beijing, China.

⁷⁷⁶ **C-0036**, Letter from CMEC to Alutrint (with attachment) dated 21 March 2014, p. 1 ("*On February 26th 2014, during a meeting with the Honourable Minister of Energy and Energy Affairs, we were advised that the Government of the Republic of Trinidad and Tobago had appointed a Negotiating Team to conclude these Claim negotiations with us.*"); **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 119 (internal page reference 549) ("*A delegation from the Government of Trinidad and Tobago headed by the then Prime Minister visited China in February 2014 [...] The result of that high-level meeting was the establishment of a committee to settle the claim in the shortest time.*"); **C-0046**, Letter from CMEC to Prime Minister K. Rowley dated 3 November 2015, p. 4 ("*In February, 2014, [...] When the president of CMEC visited the former Minister of Energy and Energy Affairs, the Minister said that the Government of Trinidad and Tobago will establish a relative team to settle the outstanding issue of the Project before the end of June of 2014.*").

⁷⁷⁷ **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27; **C-0046**, Letter from CMEC to Prime Minister K. Rowley dated 3 November 2015, p. 4.

⁷⁷⁸ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 120 (internal page reference 550).

⁷⁷⁹ **C-0568**, Parliamentary biography of Kevin Ramnarine (consolidated).

⁷⁸⁰ **C-0569**, Parliamentary biography of Larry Howai (consolidated).

⁷⁸¹ **C-0573**, Parliamentary biography of Vasant Bharath (consolidated).

⁷⁸² **C-0551**, Parliamentary biography of Anand Ramlogan (consolidated).

- 396.2 non-Minister members: Mr Selwyn Lashley (Permanent Secretary, MEEA), Mr Frank Look Kin (Advisor to MEEA), Ms Sushma Gopeesingh (Chairman, Alutrint), and members from other Ministries.
397. However, despite the establishment of the working team, the State did not progress the discussions with CMEC.⁷⁸³
398. To push ahead with the claim negotiations, CMEC dispatched a high-level delegation headed by its then Vice President Mr Jingkai Li to Trinidad and Tobago to meet and discuss with Finance Minister Larry Howai, Trade Minister Vasant Barath, Energy Minister Kevin Ramnarine, and Permanent Secretary Selwyn Lashley on 8 to 9 April 2014.⁷⁸⁴ These meetings yielded no meaningful outcomes.
399. On 22 July 2014, disappointed at the failure to reach a settlement by June 2014 as the State had promised, CMEC gave notice to Alutrint that it would proceed to arbitration and serve formal legal notice by the first week of August 2014.⁷⁸⁵
400. Upon receipt of CMEC's 22 July 2014 letter, the State initiated settlement discussions with CMEC, including attending a meeting with CMEC representatives at the Energy Ministry on 24 July 2014,⁷⁸⁶ to prevent or to try to stave off the commencement of the arbitration.
401. Mr Ian Anthony, CMEC's local representative, acted as the channel of communications between CMEC and the State during this period. On 21 August 2014, Mr Ian Anthony emailed CMEC providing a summary of the State's proposed solution for CMEC's claim based on his meeting with three high-level Government Ministers:⁷⁸⁷

⁷⁸³ **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

⁷⁸⁴ **C-0375**, Photo of meeting among Mr Larry Howai, then Minister of Finance and the Economy of Trinidad and Tobago, Ambassador Xingyuan Huang, and CMEC on 8 April 2014 at the Ministry of Finance; **C-0376**, Photos of meeting among Mr Kevin Ramnarine, then Minister of Energy and Energy Affairs of Trinidad and Tobago, Mr Vasant Bharath, then Minister of Trade, Industry, Investment and Communications of Trinidad and Tobago, and CMEC on 9 April 2014 at the Ministry of Energy and Energy Affairs.

⁷⁸⁵ **C-0047**, Letter from CMEC to Alutrint dated 22 July 2014.

⁷⁸⁶ **C-0379**, Photo of meeting among Mr Kevin Ramnarine, then Minister of Energy and Energy Affairs of Trinidad and Tobago, Ambassador Xingyuan Huang, and CMEC on 24 July 2014 at the Ministry of Energy and Energy Affairs.

⁷⁸⁷ **C-0382**, Email from I. Anthony to J. Duo dated 21 August 2014.

- 401.1 CMEC be offered the project of a five-star hotel and administrative complex in Tarouba, San Fernando to be commenced by January 2015; and
- 401.2 the claim negotiations be recommenced on such basis and subject to the further condition, as requested by Mr Ian Anthony, that *"'good faith' be shown and that [the State] advance the sums immediately available to Alutrint as a partial settlement"*.
402. Discussions continued as to a feasible amount of the preliminary good faith money in light of the account balance of Alutrint,⁷⁸⁸ which landed on an offer of US \$15 million by Energy Minister Kevin Ramnarine.⁷⁸⁹ The payment schedule and term of the final claim amount would be confirmed through further negotiations.⁷⁹⁰
403. On or around 11 September 2014, CMEC confirmed agreement in principle to the State's proposed solution (which involved a substitute project as partial settlement, and the remainder settlement through phased cash payments). Subsequently, Mr Ling Zhang of CMEC emailed Mr Ian Anthony with details of CMEC's bank account to which the good faith money should be transferred, and reminded him to obtain relevant documents regarding the substitute project.⁷⁹¹ On 17 September 2014, Mr Ling Zhang followed up with further feedback from CMEC's headquarters that the State should make the preliminary payment, given its small amount compared to the full

⁷⁸⁸ Alutrint's cash balance was in the order of US \$17 million as of September 2013: **C-0360**, Alutrint Financial Report for the month ended 30 September 2013, p. 9 (cash and cash equivalents as at 30 September 2013 and 31 December 2012 – as of end September 2013, the cash balance was TT \$112,730,901); **C-0374**, Alutrint 2012 Audited Financial Statements dated 20 March 2014, p. 18 (cash and cash equivalents as at 31 December 2012 and 2011); **C-0373**, Alutrint 2011 Audited Financial Statements dated 20 March 2014, p. 20 (cash and cash equivalents as at 31 December 2011 and 2010).

⁷⁸⁹ **C-0391**, Letter from CMEC to Ambassador X. Huang dated 30 December 2014, pp. 2-3 (*"In August [2014], the Minister of Energy and Energy Affairs verbally passed his proposed solution to CMEC as follows: The Government of Trinidad & Tobago will pay CMEC 15 million US dollars as earnest money to show its sincerity to solve the claim issue."*); **C-0046**, Letter from CMEC to Prime Minister K. Rowley dated 3 November 2015, p. 4 (*"In September, 2014, the former Government of Trinidad and Tobago proposed the following solution to CMEC on the claim issue: [...] the former Government of Trinidad and Tobago wished to get grace period for the indemnity [to] CMEC. To show the good faith, the former Government of Trinidad and Tobago would like to pay fifteen Million USD from the account balance of Alutrint Limited to CMEC beforehand."*); **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27 (*"In September 2014, the Government of Trinidad and Tobago [was] requested an indemnity from CMEC, and as a show of good faith offered to pay US \$15 million to CMEC."*).

⁷⁹⁰ **C-0391**, Letter from CMEC to Ambassador X. Huang dated 30 December 2014, p. 3; **C-0046**, Letter from CMEC to Prime Minister K. Rowley dated 3 November 2015, p. 4.

⁷⁹¹ **C-0384**, Emails between L. Zhang and I. Anthony from 11 September 2014 to 12 September 2014.

compensation demanded by CMEC, in short term and preferably before the end of September 2014 so as to demonstrate its good faith.⁷⁹²

404. It was also in or around September 2014 that the working team completed the review of the claim documents submitted by CMEC and submitted a report for Minister-level action.⁷⁹³

405. However, the State once again disengaged after making a promise of settlement. It never paid or authorised to pay any part of the US \$15 million that it had offered to pay as an alleged show of good faith.⁷⁹⁴

406. In November to December 2014, CMEC sought the coordination and assistance by the Trinidadian and Chinese Ambassadors in an attempt to prompt re-engagement by the State:

406.1 on 24 November 2014, CMEC visited the Trinidad and Tobago Embassy in Beijing and held discussions with Mr Chandradath Singh, the then Trinidad and Tobago Ambassador to China, on the claim issue related to the Project;⁷⁹⁵ and

406.2 on 30 December 2014, CMEC formally wrote to Mr Xingyuan Huang, the then China Ambassador to Trinidad and Tobago, copying Trinidad and Tobago's Prime Minister, Energy Ministry, Finance Minister, Trade Ministry, as well as Ambassador Singh. CMEC brought to the attention of all parties the standstill in the claim resolution since CMEC positively responded to the State's August settlement proposal (including the offer of an initial US \$15 million good faith payment), and requested Ambassador Huang's assistance to communicate with the State to move forward with the resolution of the claim.⁷⁹⁶

⁷⁹² **C-0386**, Email from L. Zhang to I. Anthony dated 17 September 2014.

⁷⁹³ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 120 (internal page reference 550) ("*The working team reviewed the documents submitted by CMEC and submitted a report to the Minister around September 2014.*"); **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015, p. 2 ("*After the reviewing of the claim documents, the team submitted a report to a temporary committee made up of four Government ministers.*").

⁷⁹⁴ **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

⁷⁹⁵ **C-0390**, Photos of meeting among Ambassador Chandradath Singh, Ambassador Xingyuan Huang, and CMEC on 24 November 2014 in Trinidad and Tobago Embassy, Beijing, China.

⁷⁹⁶ **C-0391**, Letter from CMEC to Ambassador X. Huang dated 30 December 2014.

407. In the meantime, CMEC instructed Mr Jinhai Duo, the then Senior Project Manager, to come back to Trinidad and Tobago to pursue further negotiations with the State. On 5 January 2015, Mr Duo Jinhai wrote to Mr Kevin Ramnarine, copying Mr Larry Howai and Mr Vasant Barath, and proposed a meeting to confirm the claim amount and the payment term and schedule. Mr Jinhai Duo noted that failing an amicable resolution, the DAB procedure would be invoked.⁷⁹⁷
408. On 28 January 2015, CMEC gave notice to Alutrint that it was taking steps to prepare a reference of the dispute to a DAB.⁷⁹⁸
409. On 13 March 2015, CMEC gave a formal notice of intention to refer all claims it has against Alutrint in respect of the Project to a DAB to be appointed pursuant to the 2008 EPC Contract.⁷⁹⁹ DAB-related correspondence ensued between CMEC and Alutrint (including through their respective counsel) from March to July 2015.⁸⁰⁰
410. After the DAB process was initiated, the State re-engaged in direct settlement negotiations with CMEC. Following a series of formal and informal discussions, in or around August 2015, CMEC's then Vice President Mr Jingkai Li and Senior Project Manager Mr Jinhai Duo went to the UNC's Campaign Office to address this matter. They met a Minister, introduced to the CMEC representatives as UNC's "No. 2 Leader", who offered a settlement sum of US \$25 million. CMEC representatives did not accept this offer as the amount fell far short of the loss sustained by CMEC. The Minister indicated that the State would further deliberate on it.⁸⁰¹

⁷⁹⁷ **C-0392**, Letter from CMEC to Energy Minister K. Ramnarine dated 5 January 2015.

⁷⁹⁸ **C-0393**, Letter from Pinsent Masons to Alutrint dated 28 January 2015.

⁷⁹⁹ **C-0048**, Letter from Pinsent Masons to Alutrint dated 13 March 2015.

⁸⁰⁰ **C-0394**, Letter from Pinsent Masons to Alutrint dated 24 March 2015; **C-0395**, Letter from Alutrint to Pinsent Masons dated 10 April 2015; **C-0396**, Letter from Pinsent Masons to Alutrint dated 14 April 2015; **C-0397**, Letter from Hogan Lovells to Pinsent Masons dated 17 April 2015; **C-0398**, Letter from Hogan Lovells to Pinsent Masons dated 1 May 2015; **C-0399**, Letter from Pinsent Masons to Hogan Lovells dated 12 May 2015; **C-0049**, Letter from Hogan Lovells to Pinsent Masons dated 14 July 2015.

⁸⁰¹ Witness Statement of Qingchi Wang, para. 66.

Based on publicly available information, among the then UNC Deputy Political Leaders, only Dr Roodal Moonilal held a ministerial portfolio. At the time, Dr Roodal Moonilal was the Minister of Housing and Urban Development, Leader of Government Business, UNC Deputy Political Leader, and Prime Minister Kamla Persad-Bissessar's designated successor: **C-0561**, Parliamentary biography of Dr Roodal Moonilal (consolidated); **C-0527**, UNC Portfolio – Deputy Political Leader – Dr. Roodal Moonilal, <https://unctt.org/portfolio/deputy-political-leader-2/> (last accessed 14 September 2024); **C-0265**, S. Wilson, *PM sees Moonilal as her successor*, Trinidad and Tobago Guardian, 16 November 2010.

411. At that time, as the next general election had been scheduled to be held imminently on 7 September 2015,⁸⁰² CMEC decided to put further negotiations on hold until after the election to assess the way forward.

(c) PNM's Return to Government and Continued Settlement Discussions

412. On 7 September 2015, the PNM defeated the UNC in the Trinidad and Tobago general election.⁸⁰³ This led to the formation of a new Government headed by Prime Minister Keith Rowley, who is now in his second term as Prime Minister of Trinidad and Tobago after the PNM's re-election in August 2020.⁸⁰⁴
413. On 24 September 2015, CMEC respectively wrote to the newly sworn-in (a) Prime Minister Keith Rowley, (b) Finance Minister Colm Imbert, and (c) Energy Minister Nicole Olivierre, to provide Project background information and seek settlement of the outstanding issues. In particular, CMEC reminded the new PNM administration that the State had on file a Hatch report evaluating CMEC's engineering claim and a working team report evaluating CMEC's claim in general.⁸⁰⁵ CMEC further followed up by meeting with Government representatives on 7 October 2015.⁸⁰⁶
414. Indeed, Prime Minister Keith Rowley acknowledged CMEC's production of its claim on the Project as "*one of the first things I had to deal with when I came in as Prime Minister*".⁸⁰⁷ CMEC's claim follow-up efforts prompted him to give a brief in

⁸⁰² **C-0401**, Summary of the 40th Sitting of the House of Representatives of the 5th Session of the 10th Republican Parliament on 12 June 2015, <https://www.ttparliament.org/sittings/40th-sitting-of-the-house-of-representatives-of-the-5th-session-of-the-10th-republican-parliament/> (last accessed 11 June 2024).

⁸⁰³ **C-0050**, Caribbean Elections, *Trinidad and Tobago General Election Results - 7 September 2015*, http://www.caribbeanelections.com/tt/elections/tt_results_2015.asp (last accessed 21 February 2023).

⁸⁰⁴ **C-0481**, Loop News, *General Election 2020: Winning candidates by constituency*, 11 August 2020, <https://tt.loopnews.com/content/general-election-2020-winning-candidates-constituency> (last accessed 22 May 2024).

⁸⁰⁵ **C-0403**, Letter from CMEC to Prime Minister K. Rowley dated 24 September 2015; **C-0404**, Letter from CMEC to Finance Minister C. Imbert dated 24 September 2015; **C-0405**, Letter from CMEC to Energy Minister N. Olivierre dated 24 September 2015.

⁸⁰⁶ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 118 (internal page reference 548).

⁸⁰⁷ **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from

Parliament on 13 October 2015 to outline the events and consequences following the announcement to cancel the Project in September 2010.⁸⁰⁸

415. On 3 November 2015, CMEC wrote further to Prime Minister Keith Rowley to set out milestone events in relation to the Project and present the following settlement proposal regarding its unresolved claim (which was broadly similar to the solution proposed by the prior Kamla Persad-Bissessar administration but which that administration failed to follow through on):

"1. To confirm the final claim amount through friendly negotiation;

2. To confirm the time of the first payment of indemnity [i.e. the good faith money] and the payment schedule of the balance;

*3. To express our good faith, CMEC would like to consider decreasing the claim amount by contracting a large industrial project or infrastructural project with the Government of Trinidad and Tobago. The decreased amount and the new project content can be confirmed by friendly negotiation and discussion by both parties after accomplishment of the first two items as mentioned above."*⁸⁰⁹

416. Prime Minister Keith Rowley responded on 20 November 2015, noting that he *"look[ed] forward to holding discussions with [CMEC] on this matter in the not too distant future"*.⁸¹⁰

417. This response was formally transmitted to CMEC by Ambassador Chandradath Singh on 27 November 2015⁸¹¹ (who had just recently visited CMEC's office on 13 November 2015 for a friendly discussion⁸¹²). In addition, Ambassador Singh forwarded a memorandum he had submitted to the Government, in which he *"highly recommended the restart of the Smelter"*⁸¹³ and highlighted that *"[CMEC] certainly want[ed] to have*

video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, p. 3.

⁸⁰⁸ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 117-120 (internal page reference 547-550).

⁸⁰⁹ **C-0046**, Letter from CMEC to Prime Minister K. Rowley dated 3 November 2015, p. 5.

⁸¹⁰ **C-0051**, Letter from Prime Minister K. Rowley to CMEC dated 20 November 2015.

⁸¹¹ **C-0410**, Letter from Ambassador C. Singh to CMEC (with attachments) dated 27 November 2015.

⁸¹² **C-0409**, Photo of meeting between Ambassador Chandradath Singh and CMEC on 13 November 2015 in Beijing, China.

⁸¹³ **C-0410**, Letter from Ambassador C. Singh to CMEC (with attachments) dated 27 November 2015, p. 1.

*discussions on monies owed to the company for the Smelter Project".*⁸¹⁴

418. To capitalise on these positive encouragements, CMEC promptly sent Mr Jinhai Duo to Trinidad and Tobago and notified the Prime Minister of CMEC's readiness to resume the official negotiations with the State (under the new PNM leadership) in December 2015.⁸¹⁵
419. This attempt to resume official negotiations continued into 2016, which included multiple requests made by CMEC to arrange meetings with Mr Colm Imbert, Minister of Finance,⁸¹⁶ Professor Kenneth Julien, Advisor to Prime Minister on energy matters,⁸¹⁷ and Mr Leroy Mayers, Chairman of Alutrint and Advisor to MEEI.⁸¹⁸ Meetings were eventually held with Colm Imbert on 8 November 2016⁸¹⁹ (discussed below) and with Kenneth Julien on 9 November 2016.⁸²⁰
420. In addition to official meeting requests, since December 2015, CMEC had discussions with Mr Sigler Jack (PNM stalwart and campaign manager⁸²¹) and Mr Noel Garcia (Chairman of the Urban Development Corporation of Trinidad and Tobago Limited⁸²²) from time to time, both of whom are close to and served as additional channels for reaching Prime Minister Keith Rowley.⁸²³
421. Having by then (if not well before) been apprised of CMEC's claim and the ongoing discussions with CMEC, Prime Minister Keith Rowley indicated at a Post Cabinet Press

⁸¹⁴ *Id.* p. 4.

⁸¹⁵ **C-0411**, Letter from CMEC to Prime Minister K. Rowley dated 3 December 2015.

⁸¹⁶ **C-0052**, Letter from CMEC to Finance Minister C. Imbert dated 6 April 2016.

⁸¹⁷ **C-0413**, Letter from CMEC to Professor K. Julien dated 12 June 2016; **C-0418**, Letter from CMEC to Professor K. Julien dated 26 October 2016.

⁸¹⁸ **C-0417**, Letter from CMEC to Alutrint dated 26 October 2016.

⁸¹⁹ **C-0419**, Photo of meeting between Mr Colm Imbert, Minister of Finance of Trinidad and Tobago, and CMEC on 8 November 2016 at the Ministry of Finance.

⁸²⁰ **C-0421**, Photo of meeting between Professor Kenneth Julien and CMEC on 9 November 2016 at the University of Trinidad and Tobago.

⁸²¹ **C-0485**, PNM's Facebook post on 1 April 2021, <https://www.facebook.com/PNMTT/posts/50-golden-glorious-years-celebrating-sigler-jack-whose-50th-anniversary-of-his-d/10165250457365472/> (last accessed 2 June 2024).

⁸²² **C-0504**, UDeCOTT 2020 Annual Report dated 2 April 2024, p. 7. The Urban Development Corporation of Trinidad and Tobago Limited (UDeCOTT) is wholly owned by GORTT and has a reporting relationship to the Office of the Prime Minister (p. 6).

⁸²³ Witness Statement of Qingchi Wang, para. 70.

Briefing on 20 October 2016 that the State planned to conclude the claim negotiations with CMEC "very soon" to settle the "a lot of money" it owed on the Project:

"We owe the Chinese a lot of money on [the aluminium smelter]. We owe the Chinese a lot of money because that aspect of our attempt to diversify our economy, using what we have to do that which was using our energy to go into aluminium [...] it was rubbished [...]. As I speak to you now, we are engaged in discussions with the Chinese about our liability to the government and agencies of China to the tune of hundreds of millions of dollars resulting from the closure of that project. [...] So right now, in answer to your question, very soon we'll conclude our discussions with the Chinese. And I mean, it might not be too early to tell you, that is my intention to, as part of all of these discussions and so on, to visit China next April. Hopefully by then we would be in a position to have softened our position and to have some cooperation with respect to how we treat with the Chinese situation." (emphases added)⁸²⁴

422. On 8 November 2016, a high-level CMEC delegation led by its then President Mr Chun Zhang held a meeting with Finance Minister Colm Imbert and Permanent Secretary Selwyn Lashley at the Ministry of Finance.⁸²⁵ CMEC indicated that it would like to find an amicable solution to this matter and discussions were held with respect to various options.⁸²⁶ It was agreed that the State would establish a working team to negotiate with CMEC to resolve the claim on the Project.⁸²⁷
423. It is clear that Mr Colm Imbert shortly briefed the meeting with CMEC to Dr Keith Rowley, who, on the next day, made the following public statement:

"[T]here are serious consequences for that shut-down [of the aluminium smelter], because one of the first things, one of the first things I had to deal with when I came in as Prime Minister, is a Chinese company producing to

⁸²⁴ C-0414, Address (Q&A session) by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the Post Cabinet Press Briefing on 20 October 2016 (video retrieved from: <https://www.youtube.com/watch?v=nURkDnbCyWM>, last accessed 7 June 2024); C-0415, Transcription of address (Q&A session) by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the Post Cabinet Press Briefing on 20 October 2016 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=nURkDnbCyWM>).

⁸²⁵ C-0419, Photo of meeting between Mr Colm Imbert, Minister of Finance of Trinidad and Tobago, and CMEC on 8 November 2016 at the Ministry of Finance.

⁸²⁶ C-0045, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 28; C-0463, Letter from CMEC to Prime Minister K. Rowley dated 25 March 2019, p. 2.

⁸²⁷ C-0420, Letter from CMEC to Finance Minister C. Imbert dated 9 November 2016, pp. 1, 3.

me a claim for US \$200 million. And that is what your government is now dealing with, trying to pack it away down to a minimum.

*But what is worse, we had our priorities, we did other things before we started dealing with that. We are now in that situation and **the company has now come to Trinidad. They met with the Minister of Finance yesterday and they outlined in detail all that has happened from the day they got involved with the project until now that they're making this claim.** And what is shocking about it is the fact that in between all the time that I was talking to the UNC government and asking the Prime Minister and speaking to her as Opposition Leader to tell the country what was the story, they were there doing things and saying nothing about it. **It was not to say they [i.e. the UNC Government] shut it down and turned away you know, they were actually engaging the company, engaging the issue, creating liabilities for us, offering to do this, not doing it, putting people from here, sending people to China.**" (emphases added)⁸²⁸*

424. After follow-ups by CMEC,⁸²⁹ on 30 November 2016, Mrs Suzette Taylor-Lee Chee (Permanent Secretary, MOF) informed CMEC that the State had approved a Committee, headed by herself, together with Mr Selwyn Lashley (Permanent Secretary, MEEI) and other representatives from the MEEI, to review the outstanding issues regarding the Project.⁸³⁰ The first meeting between CMEC and the Committee was scheduled for 20 January 2017.⁸³¹
425. In the interim, on 2 December 2016, Prime Minister Keith Rowley (after authorisation by the Cabinet) provided an update on the status of the Project in Parliament.⁸³² Among other details, Dr Rowley stated that the Cabinet had authorised the Committee to engage external legal counsel to "*advise on the claims made by CMEC and to attempt to*

⁸²⁸ **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from video retrieved from: <https://www.facebook.com/PNMTT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>); **C-0424**, S. Santoo, *PM at election meeting: Aluminium project may return*, Trinidad and Tobago Express, 9 November 2016; **C-0425**, K. Felmine, *PM taking Alutrint 'saga' to Parliament*, Trinidad and Tobago Guardian, 11 November 2016.

⁸²⁹ **C-0420**, Letter from CMEC to Finance Minister C. Imbert dated 9 November 2016; **C-0426**, Letter from CMEC to Finance Minister C. Imbert dated 18 November 2016.

⁸³⁰ **C-0053**, Letter from MOF to CMEC dated 30 November 2016.

⁸³¹ **C-0429**, Letter from MOF to CMEC dated 21 December 2016; **C-0430**, Letter from CMEC to MOF dated 22 December 2016.

⁸³² **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), pp. 24-29.

*negotiate a settlement in the best interest of Trinidad and Tobago".*⁸³³

426. On 20 January 2017, the meeting between Mr Jinhai Duo and Mr Ling Zhang of CMEC and the Committee was held at the MOF.⁸³⁴ The meeting was chaired by Mrs Michelle Durham-Kissoon (Acting Permanent Secretary, MOF) who had taken over Mrs Suzette Taylor-Lee Chee's responsibilities in the Committee.⁸³⁵ Other Committee members attending the meeting included Mr Selwyn Lashley (Permanent Secretary, MEEI), Ms Heidi Wong (Deputy Permanent Secretary, MEEI),⁸³⁶ Mr Leroy Mayers (Advisor to MEEI), and Mr Mykel Khan (Economic Policy Analyst, MOF).⁸³⁷
427. At this meeting, CMEC reaffirmed its prior settlement proposal (i.e. phased cash payment plus partial settlement via substitute project) as had been presented to Prime Minister Keith Rowley in November 2015 and Finance Minister Colm Imbert in November 2016.⁸³⁸ The attendees reached the consensus to resolve CMEC's claim in the near term through friendly negotiation and consultation, with the second meeting to be convened on 20 February 2017.⁸³⁹
428. The scheduled second meeting was cancelled on short notice by the Committee on the ground that *"we are still in the process of gathering documents and garnering assistance on the matter"*.⁸⁴⁰
429. By way of letter dated 15 March 2017, Mrs Michelle Durham-Kissoon provided several updates to CMEC:⁸⁴¹

⁸³³ *Id.* pp. 28-29.

⁸³⁴ **C-0431**, Photo of meeting between the PNM Administration Committee and CMEC on 20 January 2017 at the Ministry of Finance.

⁸³⁵ For more information about Suzette Taylor-Lee Chee and Michelle Durham-Kissoon, please refer to **C-0511**, Trinidad and Tobago Ministry of Finance, *Our Ministry* → *Executive Team* → *Permanent/Deputy Permanent Secretaries*, <https://www.finance.gov.tt/our-people/permanent-secretaries/> (last accessed 23 May 2024) and **C-0507**, Trinidad and Tobago Ministry of Finance, *About Us* → *Permanent Secretaries*, <https://archive.finance.gov.tt/about-us/permanent-secretaries/> (last accessed 10 January 2024).

⁸³⁶ For more information about Heidi Wong, please refer to Note J4 of Annex 3.

⁸³⁷ **C-0544**, LinkedIn Profile of Mykel Khan, <https://tt.linkedin.com/in/mykel-khan-b9098b43> (last accessed 7 August 2024), p. 2.

⁸³⁸ **C-0432**, Letter from CMEC to MOF dated 9 February 2017.

⁸³⁹ *Id.* p. 1.

⁸⁴⁰ **C-0433**, Emails between L. Zhang and M. Khan from 8 February 2017 to 17 February 2017, p. 2.

⁸⁴¹ **C-0054**, Letter from MOF to CMEC dated 15 March 2017.

- 429.1 the Committee was reviewing relevant documents already in its possession and requested CMEC to prepare and deliver any additional relevant documents (which CMEC promptly delivered four days later on 19 March 2017);⁸⁴²
- 429.2 pursuant to the Cabinet's decision, the Committee was in the process of hiring a legal expert on this matter to conduct the review and act as the State's advisor during the negotiations; and
- 429.3 the meeting between CMEC and the Committee would be reconvened as soon as the review was completed, to be confirmed by a subsequent letter.
430. To CMEC's disappointment and despite several follow-ups, no meeting to negotiate was reconvened. In subsequent correspondence of 12 May 2017 and 17 August 2017, Mrs Michelle Durham-Kissoo claimed that the lack of progress was due to the non-receipt of the Cabinet's decision regarding the selection and procurement of the legal expert and the resulting hold-up in the review of documents relevant to CMEC's claim.⁸⁴³
431. However, contrary to the Committee's suggestions to CMEC, it appears that the State had arrived at a quantitative assessment of CMEC's claim by no later than October 2017 – in the parliamentary proceedings on 20 October 2017, while Prime Minister Keith Rowley was updating Parliament on the settlement arrangement with Sural, he added that:

"We are in discussions with the Chinese Government with respect to settlement of another claim with respect to the closure and abandonment of the smelter project. As a matter of fact, that is a much larger sum we have been dealing with and that is still in the pipeline. As a matter of fact, only tomorrow morning, or is it today? [Mr Stuart Young: Today.] Today, we have a meeting with the Chinese on that matter. So that is in the pipeline. It is not in the budget, but it is on the table. [...] What I just mentioned about the Chinese Government has to do with the UNC closing down the smelter. That was being funded by the Chinese Exim Bank. We have liabilities there in the

⁸⁴² C-0042, Letter from CMEC to MOF dated 19 March 2017.

⁸⁴³ C-0055, Letter from MOF to CMEC dated 12 May 2017; C-0443, Letter from MOF to CMEC dated 17 August 2017.

approximation of about US \$100 million." (emphasis added)⁸⁴⁴

432. Relevantly, in a March 2018 communication to CMEC, Mr Mykel Khan informed CMEC that (for circumstances unexplained to CMEC) the Committee had been *"working on the hiring of new lawyers"* (emphasis added).⁸⁴⁵ On 9 April 2018, after CMEC made another request for an update as to the Committee's hiring of the legal expert, Mr Mykel Khan replied by email that *"[t]he Ministry is working on hiring the lawyers soon, just have a little more in the process to go again. If we require more information we will let you know. I hope to have more information for you by the end of the week"*.⁸⁴⁶ This promised update was never provided; in fact, Mr Mykel Khan left the MOF in or around April 2018.⁸⁴⁷
433. When the discussions with the Permanent Secretaries-led Committee seemed to have entered into a stalemate due to the alleged difficulty in procuring legal services, beginning in April 2017, CMEC again started to directly reach out to Government Ministers to initiate meetings and push forward with the settlement.
434. In April 2017, in a letter to Prime Minister Keith Rowley, CMEC noted that *"[w]hile CMEC is very appreciative of the progress made and the various statements of GORTT acknowledging its intention to settle this outstanding matter, we do hope that the outstanding issues of the Alutrint Smelter Project can be settled in the near future."*⁸⁴⁸ Therefore, CMEC proposed to the Prime Minister that Mr Stuart Young, the then Minister in the Office of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister,⁸⁴⁹ visit CMEC's Beijing headquarters during his upcoming official visit to China for the Belt and Road Forum with the aim of *"advance[ing] our negotiations sufficiently to reach an agreement on the principle and time table"*.⁸⁵⁰

⁸⁴⁴ C-0445, Trinidad and Tobago Hansard, 20 October 2017 (11th Sitting – 3rd Session – 11th Republican Parliament), pp. 13-14 (internal page reference 435-436).

⁸⁴⁵ C-0453, Emails between L. Zhang and M. Khan dated 7 March 2018.

⁸⁴⁶ C-0056, Emails between L. Zhang and M. Khan dated 9 April 2018.

⁸⁴⁷ C-0544, LinkedIn Profile of Mykel Khan, <https://tt.linkedin.com/in/mykel-khan-b9098b43> (last accessed 7 August 2024).

⁸⁴⁸ C-0434, Letter from CMEC to Prime Minister K. Rowley (with attachment) dated 20 April 2017, p. 1.

⁸⁴⁹ C-0572, Parliamentary biography of Stuart Young (consolidated), p. 3.

⁸⁵⁰ *Id.* p. 2.

435. In April to June 2017, CMEC engaged in correspondence with Mr Stuart Young to arrange for and follow up on a meeting with him that took place at CMEC's office on 13 May 2017.⁸⁵¹ At the meeting, CMEC and Mr Stuart Young managed to agree on two general principles:
- 435.1 settlement through friendly negotiations to achieve a win-win- result;⁸⁵² and
- 435.2 settlement through cash payment and new potential project cooperation.⁸⁵³
436. In December 2017, CMEC brought the unsuccessful attempts to have a second meeting with the Committee to the attention of Mr Colm Imbert and requested his assistance to arrange a meeting in January 2018.⁸⁵⁴
437. Over 2018 to early 2019, in addition to status checking with the Committee from time to time, CMEC continued the written follow-up with Dr Keith Rowley⁸⁵⁵ and Mr Vishnu Dhanpaul (Head Permanent Secretary, MOF⁸⁵⁶).⁸⁵⁷
438. In March 2019, concerned with the lack of progress in the claim negotiations, CMEC dispatched a delegation back to Trinidad and Tobago and requested in-person meetings with Dr Keith Rowley,⁸⁵⁸ Mr Selwyn Lashley,⁸⁵⁹ and Mr Leroy Mayers.⁸⁶⁰ Although Mr Leroy Mayers initially indicated that he "*will revert to [CMEC] on this matter*",⁸⁶¹ no

⁸⁵¹ **C-0435**, Letter from CMEC to Minister S. Young dated 20 April 2017; **C-0436**, Letter from CMEC to Minister S. Young dated 9 May 2017; **C-0437**, Letter from CMEC to Trinidad and Tobago Embassy in China (with attachment) dated 9 May 2017; **C-0438**, Photo of meeting between Mr Stuart Young, then Minister in the Ministry of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister, and CMEC on 13 May 2017 in Beijing, China; **C-0439**, Letter from CMEC to Minister S. Young dated 17 May 2017; **C-0440**, Letter from CMEC to Minister S. Young dated 5 June 2017.

⁸⁵² **C-0439**, Letter from CMEC to Minister S. Young dated 17 May 2017; **C-0440**, Letter from CMEC to Minister S. Young dated 5 June 2017.

⁸⁵³ **C-0440**, Letter from CMEC to Minister S. Young dated 5 June 2017.

⁸⁵⁴ **C-0449**, Letter from CMEC to Finance Minister C. Imbert dated 19 December 2017.

⁸⁵⁵ **C-0454**, Letter from CMEC to Prime Minister K. Rowley dated 5 May 2018; **C-0455**, Letter from CMEC to Prime Minister K. Rowley dated 24 July 2018.

⁸⁵⁶ **C-0507**, Trinidad and Tobago Ministry of Finance, *About Us* → *Permanent Secretaries*, <https://archive.finance.gov.tt/about-us/permanent-secretaries/> (last accessed 10 January 2024), p. 1.

⁸⁵⁷ **C-0460**, Letter from CMEC to MOF dated 29 January 2019.

⁸⁵⁸ **C-0463**, Letter from CMEC to Prime Minister K. Rowley dated 25 March 2019.

⁸⁵⁹ **C-0461**, Letter from CMEC to MEEI dated 21 March 2019.

⁸⁶⁰ **C-0462**, Letter from CMEC to Alutrint dated 21 March 2019.

⁸⁶¹ **C-0464**, Letter from Alutrint to CMEC dated 27 March 2019.

further response was received and the CMEC delegation left Trinidad and Tobago at the end of April 2019.⁸⁶²

439. Around the same time, CMEC entered into contact with Mr William (Bill) Francis (of KMS Investments Ltd) for his local resources and assistance to facilitate the negotiations with the State regarding CMEC's outstanding claim on the Project. CMEC notified Mr Colm Imbert of the engagement of Mr William Francis in July 2019.⁸⁶³

440. From December 2019 to January 2020, CMEC twice dispatched a delegation to Trinidad and Tobago to pursue a meeting with Mr Colm Imbert.

440.1 The first trip in December 2019 led to no meeting being held due to Mr Colm Imbert's indication of "*his hectic schedule[] and also that he will be proceeding on vacation leave next week*".⁸⁶⁴

440.2 The second trip in January 2020, which was in reliance upon Mr Colm Imbert's representation of his availability to meet with CMEC at this time,⁸⁶⁵ again led to no meeting being held due to non-receipt of a confirmed meeting date from Mr Colm Imbert after CMEC's arrival.⁸⁶⁶

441. A meeting between CMEC and Mr Colm Imbert was eventually scheduled for 11 February 2020 at the MOF.⁸⁶⁷ After making meeting preparations as requested,⁸⁶⁸ this

⁸⁶² **C-0465**, Letter from CMEC to Alutrint dated 10 April 2019 (the CMEC delegation was initially scheduled to depart on 18 April 2019); **C-0466**, Letter from CMEC to Alutrint dated 16 May 2019 (the CMEC delegation extended its stay until the end of April 2019 to await the meeting with Mr Leroy Mayers (which did not take place) and indicated that they would be prepared to come back once Mr Leroy Mayers confirmed the date of the meeting).

⁸⁶³ **C-0467**, Letter from CMEC to Finance Minister C. Imbert dated 24 July 2019.

⁸⁶⁴ **C-0469**, Emails between W. Francis and S. Spence from 5 December 2019 to 17 December 2019, pp. 1-2 (Ms Sandra Spence's email of 17 December 2019).

⁸⁶⁵ **C-0469**, Emails between W. Francis and S. Spence from 5 December 2019 to 17 December 2019, p. 2 (Ms Sandra Spence's email of 17 December 2019: "[Finance] Minister indicated that if [the CMEC delegation] return to Trinidad and Tobago in January [2020], he will be prepared to meet with them."); **C-0470**, Letter from CMEC to Finance Minister C. Imbert dated 18 December 2019 ("CMEC [...] will send the delegation back to your esteemed country again in January, 2020 as stated in the email").

⁸⁶⁶ **C-0471**, Letter from CMEC to Finance Minister C. Imbert dated 13 January 2020.

⁸⁶⁷ **C-0472**, Email from S. Spence to W. Francis dated 15 January 2020.

⁸⁶⁸ **C-0057**, Letter from CMEC to Finance Minister C. Imbert dated 17 January 2020; **C-0473**, Letter from CMEC to Finance Minister C. Imbert (with attachments) dated 20 January 2020.

meeting did not take place due to Trinidad and Tobago's imposition of Covid-19 travel restrictions for persons departing China.⁸⁶⁹

442. In order to reconvene the meeting as soon as possible in the face of this unexpected development, CMEC was prepared to send its delegation to a third country for a 14-day layover before arriving at Trinidad and Tobago to comply with the travel restriction.⁸⁷⁰ But Mr Colm Imbert declined to commit to a meeting date.⁸⁷¹ Soon thereafter, effective 22 March 2020, the State completely closed all borders to stem the spread of Covid-19.⁸⁷²
443. For the remainder of 2020, CMEC made multiple attempts and reminders to arrange a virtual meeting with Mr Colm Imbert, to no avail.⁸⁷³
444. By letter dated 29 June 2021, CMEC gave notice to Mr Colm Imbert that CMEC intended to commence legal action failing a satisfactory response from the State by the end of July 2021.⁸⁷⁴
445. This finally prompted a response from Mr Colm Imbert in which he stated "[m]y understanding of this situation was that travel was not possible at the time due to the restrictions of the pandemic. Perhaps a virtual meeting can be arranged, if that will

⁸⁶⁹ **C-0474**, Trinidad and Tobago Office of the Prime Minister, *14 Day Travel Restrictions for Persons Departing China*, 30 January 2020, <https://www.opm.gov.tt/14-day-travel-restrictions-for-persons-departing-china/> (last accessed 11 June 2024). This made it impossible for CMEC to arrive in Trinidad and Tobago in time to attend the 11 February 2020 meeting.

⁸⁷⁰ **C-0475**, Letter from CMEC to Finance Minister C. Imbert dated 27 February 2020.

⁸⁷¹ **C-0476**, Email from C. Imbert to L. Zhang dated 27 February 2020.

⁸⁷² **C-0477**, C. Kissoon, *T&T's borders closed to all*, Trinidad and Tobago Express, 21 March 2020.

⁸⁷³ **C-0478**, Letter from CMEC to Finance Minister C. Imbert dated 28 June 2020 (CMEC proposing a virtual meeting in July 2020); **C-0479**, Email from C. Imbert to L. Zhang dated 29 June 2020 (Mr Colm Imbert responding with "Not at this time. Will arrange soon, however"); **C-0480**, Letter from CMEC to Finance Minister C. Imbert dated 28 July 2020 (CMEC sending a reminder of the arranging of the virtual meeting); **C-0482**, Letter from CMEC to Finance Minister C. Imbert dated 20 August 2020 (CMEC sending a second reminder of the arranging of the virtual meeting); **C-0484**, Letter from CMEC to Finance Minister C. Imbert dated 9 November 2020 (CMEC sending a third reminder of the arranging of the virtual meeting and making commercial settlement proposal).

⁸⁷⁴ **C-0486**, Letter from CMEC to Finance Minister C. Imbert dated 29 June 2021.

assist the process".⁸⁷⁵ However, Mr Colm Imbert disengaged again after CMEC replied to take forward the arrangement of the virtual meeting.⁸⁷⁶

E.10 Lead-up to This Arbitration

446. On 25 August 2022, in the face of the State's persisting silence and inertia, CMEC notified Mr Colm Imbert that, as foreshadowed in CMEC's 29 June 2021 letter, its legal representative, Clifford Chance, would shortly commence dispute resolution procedure against the State.⁸⁷⁷
447. On 26 August 2022, CMEC sent (via Clifford Chance) a written Notification of a Claim and Request for Consultations and Negotiations (**Notification of Claim**) to the State pursuant to Article 10(2) of the BIT to amicably resolve the Parties' investment dispute.⁸⁷⁸ CMEC proposed good faith consultations and negotiations by videoconference within one month of the date of the Notification of Claim.⁸⁷⁹
448. On 30 September 2022, Charles Russell Speechlys came on record as counsel for the State and requested an additional 30 days to respond regarding the way forward.⁸⁸⁰
449. However, no meaningful response was provided – and no consultations or negotiations were held – in the following months, despite multiple reminders by Clifford Chance.⁸⁸¹
450. On 7 February 2023, Charles Russell Speechlys stated in its last pre-arbitration correspondence that "[w]e regret not being able to respond substantially to your

⁸⁷⁵ **C-0487**, Email from Finance Minister C. Imbert to L. Zhang dated 1 July 2021.

⁸⁷⁶ **C-0488**, Letter from CMEC to Finance Minister C. Imbert dated 14 July 2021; **C-0058**, Letter from CMEC to Finance Minister C. Imbert (with attachment) dated 6 August 2021.

⁸⁷⁷ **C-0490**, Letter from CMEC to Finance Minister C. Imbert (with attachment) dated 25 August 2022.

⁸⁷⁸ **C-0491**, CMEC's Notification of Claim dated 26 August 2022; **C-0492**, Delivery records of CMEC's Notification of Claim, 26 August 2022 to 1 September 2022.

⁸⁷⁹ **C-0491**, CMEC's Notification of Claim dated 26 August 2022, para. 14.

⁸⁸⁰ **C-0493**, Pre-arbitration correspondence between Charles Russell Speechlys and Clifford Chance (consolidated), 30 September 2022 to 7 February 2023, p. 2 (Charles Russell Speechlys' letter of 30 September 2022).

⁸⁸¹ *Id.* p. 3 (Clifford Chance's letter of 10 October 2022), p. 4 (Clifford Chance's email of 1 November 2022), p. 5 (Clifford Chance's email of 18 November 2022), p. 10 (Clifford Chance's email of 6 December 2022).

*communication [...] [having] to do with delays in obtaining sufficient instructions to respond in a constructive manner."*⁸⁸²

451. With the six-month cooling off period expired on 26 February 2023, CMEC proceeded to submit its Request for Arbitration on 27 March 2023.

F. GOVERNING LAW AND RELEVANT EVIDENTIARY RULES

452. International law governs the jurisdictional provisions of the BIT and the ICSID Convention as well as the substantive issues in dispute. Because the BIT and the ICSID Convention are treaties, the applicable international law also includes the rules expressed in the foundational instrument governing such instruments: the Vienna Convention on the Law of Treaties⁸⁸³ (**Vienna Convention**). Trinidad and Tobago signed the Vienna Convention on 23 May 1969 but has not ratified it.⁸⁸⁴ Nonetheless, the Vienna Convention expresses rules of customary international law that are binding on the Respondent, even if it has not ratified that Convention.
453. In relation to the law to be applied in this case, a trite yet fundamental point must be reiterated for the avoidance of any doubt: CMEC's claims in this ICSID arbitration are based on Trinidad and Tobago's violation of its obligations under the BIT and international law exclusively, *not* for breaches of the EPC Contracts. It follows that beyond establishing the existence of contractual rights held by CMEC by way of BIT-covered investments in Trinidad and Tobago at the time they were expropriated by the State, the provisions of these contracts – including their ICC dispute resolution provisions – are entirely irrelevant to this case.
454. States often attempt to blur the lines between contractual claims and BIT claims in a bid to escape liability in treaty arbitrations – a strategy that Trinidad and Tobago has already foreshadowed in its written and oral submissions to date. In fact, this is exactly what Pakistan had sought to do in BIT-based ICSID proceedings brought by Turkish investor Karkey Karadeniz in relation to the expropriation of its rights under a contract

⁸⁸² *Id.* p. 19 (Charles Russell Speechlys' letter of 7 February 2023).

⁸⁸³ **CL-0021**, Vienna Convention on the Law of Treaties (Vienna Convention), signed 23 May 1969, entered into force 27 January 1980.

⁸⁸⁴ **CL-0021**, Vienna Convention on the Law of Treaties (Vienna Convention), signed 23 May 1969, entered into force 27 January 1980, p. 33.

with the State-affiliated company Lakhra. Pakistan argued that the LCIA clause in that contract prevented the ICSID tribunal from hearing the claims. In that case, the tribunal made its decision in one short paragraph, reasoning that the LCIA arbitration clause in that contract was "*inapposite*"⁸⁸⁵ and that it:

*"does not prevent the Tribunal from deciding Karkey's claims related to the expropriation of Karkey's contract rights. Indeed, the Tribunal is not requested to deal with contract claims and to condemn Pakistan or even less Lakhra to pay damages for a breach of contractual obligations, but to assess the value of contract rights that have allegedly been expropriated. It is therefore important to identify the rights duly held by the Claimant under the Contract at the moment when the expropriation occurred."*⁸⁸⁶

455. The overarching parallel between that recent case and this current arbitration is striking. The tribunal's pithy dismissal of the entirety of Pakistan's submissions on this issue is equally applicable in the present proceedings because CMEC requests the Tribunal not to rule on any contract-based claims but on the expropriation and other wrongful acts under international law.
456. CMEC's claims founded on international law also extend to damages: monetary reparation requested in this arbitration is not for Alutrint's breaches of the EPC Contracts, but for damages under international law in respect of Trinidad and Tobago's expropriation and other mistreatment of CMEC's investments (including various EPC Contracts rights) in violation of the BIT.
457. Before proceeding to address the interpretation and application of relevant provisions of the BIT and the ICSID Convention in detail below, the Claimant will elaborate more specifically on the framework of governing law that applies to the BIT and the ICSID Convention. Each of these key instruments will be discussed in turn.

F.1 Applicable law under the BIT

⁸⁸⁵ **CL-0022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, para. 678.

⁸⁸⁶ **CL-0022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, para. 678.

458. Article 10(4) of the BIT provides that an investor-State arbitral tribunal constituted under Article 10(3):

*"shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this agreement as well as the applicable principles of international law."*⁸⁸⁷

459. The legal regime under Article 10(3) is accordingly based on three levels:

- (a) the law of Trinidad and Tobago (*"the law of the Contracting Party to the dispute"*), including its rules on the conflict of laws. While this body of municipal law is referred to first in the clause, the hierarchy of norms recognised under international law requires that a rule or principle of international law will prevail over municipal law to the extent there is a conflict between the two⁸⁸⁸ (and a State cannot rely on its internal law to avoid an international obligation);⁸⁸⁹
- (b) the BIT (*"this agreement"*) itself, the provisions of which provide the primary legal framework for the Tribunal's decision on the merits; and
- (c) the *"applicable principles of international law"*. This is a common treaty device, which is a reference to rules derived from the sources of international law recognised in Article 38(1) of the Statute of the ICJ, namely:
 - "a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
 - b. international custom, as evidence of a general practice accepted as law;*
 - c. the general principles of law recognized by civilized nations;*

⁸⁸⁷ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10(4).

⁸⁸⁸ **CL-0023**, R. Dolzer, U. Kriebaum and C. Schreuer, "Settling Investment Disputes", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), p. 422 (*"Where there is a contradiction between the two, international law will prevail"*).

⁸⁸⁹ See for example, **CL-0021**, Vienna Convention on the Law of Treaties (Vienna Convention), signed 23 May 1969, entered into force 27 January 1980, Art. 27 (*"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty"*).

- d. *subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules law.*"⁸⁹⁰

460. However, for any given claim under the BIT, the principles of international law (the *lex generalis*) apply only to the extent the provisions of BIT (the *lex specialis*) contain *lacunae* or where the Claimant's claim is based specifically on rules of international law (rather than a BIT provision).

461. The rules of international law applicable in this case are discussed in detail in the sections that follow. These relevantly include (but are not limited to):

- (a) the rules of interpretation reflected in the Vienna Convention (see below);
- (b) good faith and its subsidiary principles and doctrines, including the rule that a party cannot derive an advantage from his own wrong (*nullus commodum capere de sua injuria propria*);
- (c) *pacta sunt servanda*; and
- (d) the rules for reparations articulated in *Factory at Chorzów*⁸⁹¹ and the Articles on the Responsibility of States for Internationally Wrongful Acts 519 (**ILC Articles**).⁸⁹²

462. As referred to above, the Vienna Convention forms a key component of the law applicable to the BIT. An imperative set of rules enshrined in the Vienna Convention (which is also expressive of customary international law) is the international law relating to treaty interpretation. The master interpretation provision of the Vienna Convention is Article 31(1), which requires that:

⁸⁹⁰ **CL-0024**, Statute of the International Court of Justice (ICJ Statute), adopted 26 June 1945, entered into force 24 October 1945, Art. 38(1).

⁸⁹¹ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928, p. 47.

⁸⁹² **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Arts. 31 and 34 to 39.

*"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*⁸⁹³

463. During the drafting of Article 31 of Vienna Convention, the International Law Commission (**ILC**) cautioned that *"the text [of the treaty] must be presumed to be the authentic expression of the intentions of the parties; and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text [of the treaty], not an investigation ab initio into the intentions of the parties."*⁸⁹⁴ This overarching approach to the interpretation of treaties was confirmed by the International Court of Justice (**ICJ**) in the Case Concerning the *Territorial Dispute between Libya and Chad*, when it noted *"[i]nterpretation must be based above all upon the text of the treaty"*.⁸⁹⁵
464. Although primacy is given to the text of a treaty, Article 31 of the Vienna Convention still requires, among other things, consideration to be given to the object and purpose of the treaty to be interpreted. A generally accepted method to ascertain a treaty's object and purpose is through reference to the preamble of the treaty subject to interpretation.⁸⁹⁶ This line of investigation is particularly important for the BIT given that its preamble records at the time of signature that both the Peoples' Republic of China and the Republic of Trinidad and Tobago were (inter alia):

"Desiring to intensify economic cooperation between both States on the basis of equality and mutual benefits;

Recognizing that the reciprocal encouragement, promotion and protection of investments will be conducive to stimulating business initiatives of investors and the economic development of both States;

⁸⁹³ **CL-0021**, Vienna Convention on the Law of Treaties (Vienna Convention), signed 23 May 1969, entered into force 27 January 1980, Art. 31(1).

⁸⁹⁴ **CL-0027**, United Nations, *Yearbook of the International Law Commission*, 1966, Volume II, United Nations Publication, No. 67, V.2, p. 220, para. 11.

⁸⁹⁵ **CL-0028**, *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, 3 February 1994, para. 41.

⁸⁹⁶ **CL-0029**, A. Bianchi and F. Zarbiyev, "What's the Purpose of 'Object and Purpose'?", *Demystifying Treaty Interpretation* (Cambridge University Press, 2024:118-141), p. 131 (*"It is nonetheless interesting to go through the main elements that are usually taken into account to figure out a treaty's object and purpose. A prominent role is played by the preamble, in which parties frequently express more or less directly the purpose they seek by concluding the agreement"*).

Intending to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party [...]".⁸⁹⁷

465. These preambular provisions of the BIT highlight that promoting foreign investment was a key object and purpose. This reading of the preamble is also confirmed by Article 3(1) of the BIT, which provides that "[e]ach Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory".⁸⁹⁸ These aspects of the treaty interpretation rules must be kept in mind when applying Article 31 of the Vienna Convention to the terms of the BIT.

F.2 Applicable law under the ICSID Convention

466. Article 42(1) of the ICSID Convention provides that, in the absence of any rules of law as may be agreed by the parties (as is the case here), an ICSID arbitral tribunal:

*"shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable."*⁸⁹⁹

467. Similar to the BIT, this provision in the present case envisages a legal regime based on three levels. The first is the law of Trinidad and Tobago ("*law of the Contracting State party to the dispute*") while the second and third are two applicable rules of international law: (i) the terms of the ICSID Convention and (ii) the rules of international law as identified above.
468. Any conflict between international laws and host-state laws as referred to under Article 42(1) of the ICSID Convention is to be resolved as follows: "*where there are applicable host-state laws, they must be checked against international laws, which will prevail in case of conflict*".⁹⁰⁰

⁸⁹⁷ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Recitals, p. 2.

⁸⁹⁸ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 3(1).

⁸⁹⁹ **CL-0030**, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), entered into force 14 October 1966, Art. 42(1).

⁹⁰⁰ **CL-0031**, *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding, 31 May 1990, para. 40.

G. EVIDENTIARY WEIGHT OF STATEMENTS BY POLITICIANS AND GOVERNMENT OFFICIALS

469. This case involves a number of critical statements made by officials of the State. Given the primacy of the international legal framework in this case, attention must be drawn to the weight accorded to such statements by international courts and tribunals in international law disputes. The most authoritative exposition of this practice is contained in the judgment of the ICJ in *Military and Paramilitary Activities in and against Nicaragua*:

*"The material before the Court also includes statements by representatives of States, sometimes at the highest political level. Some of these statements were made before official organs of the State or of an international or regional organization, and appear in the official records of those bodies. Others, made during press conferences or interviews, were reported by the local or international press. The Court takes the view that statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission."*⁹⁰¹

470. This guidance must be taken into account when determining the evidentiary weight to be accorded the statements by high-ranking officials and politicians of Trinidad and Tobago referred to in this Memorial of Claim.
471. The Claimant turns now to set out its case on the jurisdiction of the Tribunal.

H. JURISDICTION

472. The jurisdiction of this Tribunal over the present dispute derives from both the BIT and the ICSID Convention. The Claimant will demonstrate that the Tribunal has jurisdiction under this two-tiered framework by first considering jurisdiction under the BIT and thereafter relevant ICSID Convention jurisdictional requirements.

H.1 The BIT

⁹⁰¹ **CL-0032**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 27 June 1986, I.C.J. Reports 1986, p. 14, para. 64.

473. The Claimant acknowledges that the jurisdictional conditions to be satisfied under the BIT are expressed in Article 10 ("*Settlement of Disputes Between One Contracting Party and an Investor of the Other Contracting Party*").⁹⁰² The first paragraph of Article 10 requires the existence of an "*investment dispute*", which is defined as "*a dispute between a Contracting Party and an investor of the other Contracting Party, concerning an obligation of the former under this Agreement in relation to an investment of the latter*". This sentence deploys defined terms within which are contained the elements of jurisdiction *ratione personae*, jurisdiction *ratione materiae*, and jurisdiction *ratione temporis*, all discussed separately below.
474. The second paragraph of Article 10 further requires that:

"In the event of an investment dispute, the Parties to the investment dispute should initially seek a resolution through consultation and negotiation. If the investment dispute cannot be settled amicably within six months from the date of written notification of a claim, the investor that is a party to an investment dispute may submit the investment dispute for resolution under one of the following alternatives:

- (a) [...]
- (b) *to international arbitration in accordance with paragraph 3 below, provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before submission of the dispute to the aforementioned arbitration procedure [...]"*.

475. The jurisdictional elements in this second paragraph are addressed within the section below on the State's consent to arbitration (jurisdiction *ratione voluntatis*).
476. Uncontroversially, in applying the BIT, the term "*Contracting Party*" refers either to the PRC or to Trinidad and Tobago and the term "*Contracting Parties*" refers to both States.

(a) Jurisdiction *ratione personae* – "*investor of the other Contracting Party*"

⁹⁰² **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10.

477. Article 1(2) of the BIT defines covered "investors" as:

*"economic entities, including companies, corporations, associations, partnerships and other organizations incorporated and constituted under the laws and regulations of either Contracting Party and which have their seats in that Contracting Party".*⁹⁰³

478. The Claimant is, and has at all material times been, a company:

- (a) duly incorporated and constituted under the laws and regulations of the PRC; and
- (b) having its "seat" in the PRC because its headquarters and central management are located in Beijing, PRC.

479. CMEC therefore qualifies as an Article 1(2) "economic entity".

480. Based on the above, CMEC is an "investor" of a "Contracting Party", i.e. the PRC. Accordingly, the Tribunal has jurisdiction *ratione personae* over CMEC under the BIT.

(b) Jurisdiction *ratione materiae* – "investment" of an "investor"

481. The key provision for jurisdiction *ratione personae* is Article 1(1) of the BIT. The full text of that article reads as follows:

"'investment' means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter and in particular, though not exclusively, includes:

(a)movable and immovable property as well as any other property rights such as mortgages, liens and pledges;

(b)shares, stock, debentures and any other form of participation in a company;

(c)claims to money, or to any performance under contract having an economic value associated with an investment, loans only being included when they are directly related to an investment;

⁹⁰³ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 1(2)(b).

(d)intellectual property rights including copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;

(e)business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources;

*Any change in the form in which assets are invested shall not affect the character of the assets as investments, provided that such change is done in conformity with laws and regulations of the Contracting Party in which the assets are invested."*⁹⁰⁴

482. The BIT's definition of "*investment*" is drafted in broad language that is normally associated with a pro-investment treaty. The language of the *chapeau* makes it clear that the notion of "*investment*" is wide ("*every kind of asset*") and that the list beneath is intended to be non-exhaustive ("*though not exclusively, includes*"). A broad reading of the term "*investment*" would of course also be consistent with the object and purpose of the BIT, which was (*inter alia*) "*to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party*".⁹⁰⁵

483. The Claimant has the following BIT defined "*investments*" that are protected under the BIT:

(a) claims to money (including for payments to contractors, costs, damages or lost profits) or performance under:

(i) the 2005 EPC Contract;

(ii) the PDC Contract of 16 May 2008;

(iii) the PDC Contract as amended on 19 January 2009;

(iv) the 2008 EPC Contract; and

⁹⁰⁴ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 1(2)(b).

⁹⁰⁵ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Recitals, p. 2.

- (v) the 2008 EPC Contract as amended on 17 December 2009;
 - (b) intellectual property rights, including copyrights, industrial designs, know-how and goodwill, authored or owned by the Claimant; and
 - (c) items of movable property owned by the Claimant, including equipment and material used by the Claimant to perform its obligations in Trinidad and Tobago;
484. If indeed confirmation were required that the contracts listed above qualify as "*investments*", well established case law demonstrates that rights arising from contracts between an investor and a State (or a state entity) constitute protected investments.⁹⁰⁶
485. The above investments related to a large-scale aluminium smelting Project in Trinidad and Tobago. As such, they clearly fall within the BIT's expansive definition of "*investments*". This follows from the ordinary meaning of the Treaty text coupled with its object and purpose.⁹⁰⁷ Further detail on the characteristics and value of these investments is contained in the Damages section of this Memorial of Claim.
486. Additionally, Articles 1(1) and 2 of the BIT require that, to be covered, assets defined as "*investments*" under Article 1(1) must have been "*invested*" or "*made*":
- (a) "*in accordance with the laws and regulations of the other Contracting Party*"; and
 - (b) "*in the territory of*" that other Contracting Party.⁹⁰⁸

⁹⁰⁶ **CL-0033**, *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992, paras. 164-165; **CL-0034**, *IBM World Trade Corporation v. Republic del Ecuador*, ICSID Case No. ARB/02/10, Decision on Jurisdiction, 22 December 2003, paras. 11-18; **CL-0035**, *Bayinder Insaat Turizm Ticaret Ve Sanayi A.Z. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 255; **CL-0036**, *Eureko B.V v. Republic of Poland*, UNCITRAL, Partial Award, 19 August 2005, paras. 240-241; **CL-0037**, *Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, 8 March 2010, para. 92; **CL-0038**, *Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/19, Award, 30 October 2017, para. 7.52, **CL-0039**, *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Award, 13 November 2019, paras. 264, 275 and 281.

⁹⁰⁷ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 1(1)(c).

⁹⁰⁸ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 2.

487. For the avoidance of doubt, the Claimant has at all times made its investments into Trinidad and Tobago in compliance with its laws and regulations, which has never been at issue between the Parties.

488. To conclude, the Claimant's investments in Trinidad and Tobago have satisfied the requirements for a covered "*investment*" set out in the BIT. Consequently, the Tribunal has jurisdiction *ratione materiae* over the Claimant's claims.

(c) Jurisdiction *ratione temporis* – timing of the investment and dispute

489. The relevant provision for the Tribunal's jurisdiction *ratione temporis* is Article 2 of the BIT, which reads:

*"This Agreement shall apply to all investments, which are made prior to or after the entry into force by investors of either Contracting Party in the territory of the latter, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force."*⁹⁰⁹

490. The timing of the investment and the dispute irrefutably show that the investments subject to this BIT claim fall within the temporal framework set out in Article 2. The BIT entered into force on 7 December 2004 and remains in force as of the date of this Memorial of Claim. The investments that form the basis of Claimant's claims were made on various dates starting in 2003. In addition, the events giving rise to the dispute – and the dispute itself – arose well after the entry into force of the BIT.

491. Accordingly, it cannot be disputed that the Tribunal has jurisdiction *ratione temporis* in this case.

(d) Jurisdiction *ratione voluntatis* – consent to arbitration

492. The element of consent to arbitration by the State is satisfied in this case. In Article 10 of the BIT, the State made a standing offer to arbitrate "*investment disputes*" with investors of the PRC. It is established that, in circumstances where a State makes a standing written offer to arbitrate through a treaty such as the BIT, a person who is within the class of persons addressed by the State's offer ("*investors*") may accept that

⁹⁰⁹ CL-0001, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 2.

offer by filing a Notice of Arbitration, the result of which is that an arbitration agreement is formed between the disputing parties.

493. Article 10(2) of the BIT reads, in relevant part:

*"If the investment dispute cannot be settled amicably within six months from the date of written notification of a claim, the investor that is a party to an investment dispute may submit the investment dispute for resolution under the following alternatives [...] (b) to international arbitration in accordance with paragraph 3 below, provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before submission of the dispute to the aforementioned arbitration procedure."*⁹¹⁰

494. The fact that Article 10(2) conveys the State's advance consent to international arbitration is clear from the permissive language employed by the drafters ("*may submit the investment dispute for resolution*") and the fact that the provision expressly gives the investor the choice to elect between *fora* ("*under the following alternatives*").

495. The Claimant accepted the State's offer to arbitrate and selected the forum provided in Article 10(3)(a)⁹¹¹ when it filed its Request for Arbitration with ICSID on 27 March 2023.⁹¹² The arbitration agreement between the Parties came into existence on that date.

496. The only mandatory condition that the State attached to its offer of arbitration in Article 10 was that the disputing investor must have attempted to resolve the dispute through consultations and negotiations for six months from the date of written Notification of Claim. On 26 August 2022, the Claimant sent a Notification of Claim to the State, which led to an exchange of correspondence between legal counsel however, neither consultations nor negotiations took place. On the date of the Request for Arbitration, six months had elapsed since the Notification of Claim without amicable settlement.

⁹¹⁰ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10(2).

⁹¹¹ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10(3)(a).

⁹¹² Request for Arbitration, para. 81 (declaring that the Claimant "*has accepted the State's offer to arbitrate an investment dispute under Article 10 of the BIT*").

The BIT's six-month consultation and negotiation condition therefore has been satisfied by the Claimant.

H.2 The ICSID Convention

497. Article 25 of the ICSID Convention ("*Jurisdiction of the Centre*") relevantly provides:

"(1) *The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.*

(2) *'National of another Contracting State' means:*

(a) *[...]*

(b) *any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration".*⁹¹³

498. Each of the jurisdictional requirements prescribed in Article 25(1) of the ICSID Convention is satisfied in this case and dealt with separately below.

(a) "Legal dispute"

499. The present dispute arises out of the State's violation of its obligations under Articles 3, 6, and 13 of the BIT, and the legal consequences arising from those breaches.⁹¹⁴ The BIT is a treaty and, therefore, an instrument of international law. Accordingly, the present dispute is inherently legal in nature.

(b) "Arising directly"

500. The Claimant's investments are identified above. The present dispute arises directly out of the State's wrongful deprivations of these investments, the measures the State took

⁹¹³ **CL-0030**, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), entered into force 14 October 1966, Art. 25.

⁹¹⁴ Request for Arbitration, paras. 86 – 98.

against these assets and the resulting injuries suffered by the Claimant. The dispute therefore arises directly out of the Claimant's investments.

(c) Jurisdiction *ratione materiae*

501. Covered investments under the BIT must also fall within the scope of the term "*investment*" as contained in Article 25 of the ICSID Convention. The ICSID Convention does not define "*investment*" and so it is for the Tribunal to ascertain the meaning of this term and apply it to the facts. While ICSID practice varies on the method for determining whether an investment exists for the purposes of the ICSID Convention, the current preference is to start with the relevant instrument of consent⁹¹⁵ – in this case, the BIT. As explained above, the assets and interests of the Claimant that are at issue in this dispute all manifestly qualify as "*investments*" under Article 1(1) of the BIT. The question is then whether any of the BIT-covered investments are outside the limits of "*investment*" under the ICSID Convention, which they are not.

502. In determining whether an "*investment*" exists for ICSID Convention purposes, certain tribunals have followed the approach adopted in *Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco*⁹¹⁶ and have taken into account some or all of the following four characteristics that they consider an investment infers:

- (a) contribution of capital by the investor;
- (b) duration of performance;
- (c) participation in the risks of the transaction; and
- (d) contribution by the investor to the economic development of the host State.

503. ICSID tribunals tend to prefer a flexible approach to the application of these indicators (known as the "*Salini* characteristics") and not treat them as fixed jurisdictional criteria.⁹¹⁷ A case that predates *Salini* but which referred to similar characteristics was

⁹¹⁵ See for example, **CL-0040**, *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, para. 192.

⁹¹⁶ **CL-0041**, *Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, paras. 51-52.

⁹¹⁷ **CL-0042**, *Malaysian Historical Salvors v. Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009, para. 79.

Fedax v. Venezuela.⁹¹⁸ The decision in *Fedax* in large measure formulated these characteristics by referring to Professor Schreuer's early work published in the *ICSID Review*.⁹¹⁹ However, in more recent publications, Professor Schreuer (along with highly regarded co-authors) has clarified that "[t]hese features should not necessarily be understood as jurisdictional requirements but merely as typical characteristics of investments under the Convention."⁹²⁰

504. An interpretation that would restrictively interpret the meaning of an "investment" as referred to in the ICSID Convention would be incongruous with the broad definition of "investments" chosen in Article 1(1) of the BIT.⁹²¹ Indeed, the context of the term "investment" in Article 25 of the Convention includes the definition of that term in the BIT because that instrument forms the basis on which the present ICSID Convention arbitration has been commenced. Case law also indicates that ICSID jurisdiction will likely be presumed to exist if a claimant has an "investment" within the meaning of that term under the BIT under which a claim is brought.⁹²²
505. While the notion that the *Salini* characteristics form ICSID arbitration jurisdictional requirements have largely been discredited,⁹²³ it bears noting that all four are in any event satisfied in this case.

⁹¹⁸ **CL-0043**, *FEDAX N.V. v. The Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision on Jurisdiction, 11 July 1997, para. 43.

⁹¹⁹ **CL-0044**, C. Schreuer, *Commentary on the ICSID Convention*, ICSID Review - Foreign Investment Law Journal, Volume 11, 1996, p. 372, para. 122.

⁹²⁰ **CL-0045**, C. Schreuer, L. Malintoppi, A. Reinisch and A. Sinclair, *The ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (Cambridge University Press, 2nd ed, 2009), p. 128, para. 153.

⁹²¹ **CL-0042**, *Malaysian Historical Salvors v. Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009, para. 72; **CL-0046**, *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, para. 314 ("[I]f very substantial numbers of BITs across the world express the definition of 'investment' more broadly than the *Salini* test, and if this constitutes any type of international consensus, it is difficult to see why the ICSID Convention ought to be read more narrowly").

⁹²² **CL-0047**, *Patrick H. Mitchell v. The Democratic Republic of the Congo*, ICSID Case No. ARB/99/7, Final Award, 9 February 2004, paras. 43-44.

⁹²³ **CL-0045**, C. Schreuer, L. Malintoppi, A. Reinisch and A. Sinclair, *The ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (Cambridge University Press, 2nd ed, 2009), pp. 133-134 ("The development in practice from a descriptive list of typical features towards a set of mandatory legal requirements is unfortunate. The First Edition of this Commentary cannot serve as authority for this development. To the extent that the "*Salini* test" is applied to determine the existence of an investment, its criteria should not be seen as distinct jurisdictional requirements

(i) Contribution

506. ICSID tribunals have interpreted the criterion of contribution broadly to encompass not only payments of money, but other kinds of non-pecuniary contributions of value, such as "*materials, works, or services*".⁹²⁴ As is addressed above in the factual sections and below in the Damages section of this Memorial, between 2005 and 2010, CMEC made in-kind contributions in pursuance of the Project in the territory of Trinidad and Tobago and committed substantial technical, financial, and human resources to the Project. These capital expenditures and other resources qualify as contributions that form part of its "*investment*".

(ii) Duration

507. The drafters of the ICSID Convention specifically rejected the imposition of a minimum duration for an investment. Both ICSID and non-ICSID tribunals have confirmed that a minimum duration should not be imposed.⁹²⁵

508. ICSID tribunals have recognised that duration "*is a very flexible term [and] could be anything from a couple of months to many years*".⁹²⁶ The Claimant falls well within this

each of which must be met separately. In fact, tribunals have pointed out repeatedly that the criteria that they applied were interrelated and should be looked at not in isolation but in conjunction [...] A rigid list of criteria that must be met in every case is not likely to facilitate the task of tribunals or to make decisions more predictable. The individual criteria carry a considerable margin of appreciation that may be applied at the tribunal's discretion").

⁹²⁴ **CL-0048**, *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, para. 73(i), (original in French: "[s]'agissant de l'apport: Il ne peut y avoir d'«investissement» que si une partie fait dans le pays concerné des apports ayant une valeur économique. Sans doute peut-il s'agir au premier chef d'engagements financiers, mais ce serait privilégier une interprétation par trop restrictive que de ne pas admettre d'autres types d'engagements. Ces apports peuvent donc consister en prêts, en matériaux, en travaux, en services, pour autant qu'ils aient une valeur économique. En d'autres termes, il faut que le contractant ait engagé des dépenses, sous quelque forme que ce soit, afin de poursuivre un objectif économique." **Unofficial translation:** "[t]here can be no investment unless a portion of the contribution is made in the country concerned and brings with it economic value. This would presumably involve financial commitments, in the first place, but it would be too restrictive an interpretation not to admit other contributions. These contributions could, then, consist of loans, materials, works, or services, provided they have an economic value").

⁹²⁵ **CL-0042**, *Malaysian Historical Salvors v. Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009, para. 71; **CL-0049**, *Romak SA v. Republic of Uzbekistan*, PCA Case No. AA280, Award, 26 November 2009, para. 225.

⁹²⁶ **CL-0050**, *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, para. 303.

temporal spectrum, having spent several years investing in Trinidad and Tobago from 2005 onward.

509. The question of duration is therefore straightforward. However, if further confirmation is required that the duration characteristic has been satisfied, reference is made to case law that recognised the "*fact that the contract was suspended and then terminated early changes nothing*".⁹²⁷ If the EPC Contracts were not terminated and if the Claimant was not "*chased out*" of the country, the Claimant would have been making contributions into Trinidad and Tobago at least for the entire duration of the construction and up until five years after the start-up of the smelter plant.⁹²⁸

(iii) Risk

510. ICSID tribunals have been clear that an element of risk is inherent to any investment.⁹²⁹ CMEC exposed itself to financial and market risks that are germane to a long-term project such as the construction of an aluminium smelter.

(iv) Economic development

511. There can be no doubt that the Claimant and its investments contributed to the economic development of Trinidad and Tobago. The Project was designed and implemented in the national interest of Trinidad and Tobago. The State itself confirmed this point through its former Minister of Energy and Energy Industries, Senator The Honourable Conrad Enill, during his speech at the signing ceremony for the Project:

⁹²⁷ **CL-0048**, *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, para. 73(ii) (original in French: "*le fait que le Contrat ait été suspendu, puis résilié de manière anticipée n'y change rien ; pour juger de l'importance de l'apport, il faut se fonder sur la durée qui avait été conventionnellement prévue*". **Unofficial translation:** "*the fact that the Contract was suspended and then terminated early does not change anything; in assessing the significance of the contribution, one must rely on the duration that was contractually agreed upon*").

⁹²⁸ **C-0211**, Letter from Alutrint to CMEC (with attachment) dated 20 October 2009 (add explanation on training and transition to local operation).

⁹²⁹ **CL-0041**, *Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, para. 56 ("*A construction that stretches out over many years, for which the total cost cannot be established with certainty in advance, creates an obvious risk for the Contractor*"); **CL-0035**, *Bayinder Insaat Turizm Ticaret Ve Sanayi A.Z. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 136 ("*Besides the inherent risk in long-term contracts, the Tribunal considers that the very existence of a defect liability period of one year and of a maintenance period of four years against payment, creates an obvious risk for Bayindir*").

"The Alutrint Aluminium Complex will create employment opportunities for the nationals of Trinidad and Tobago that are based on technology-driven industries. [...]"

This project also brings a range of benefits to Trinidad and Tobago including:

- *Development of an area of the country that needs support*
- *Technology and Knowledge Transfer into Trinidad from China (smelter)
Direct employment– over 800*
- *Indirect employment - over 2000 - in areas such as ports, transportation, machine, fabrication and motor shops, guard services and others. [...]"*
- *Increase in foreign exchange earnings as a result of export of downstream product with added-value [...]"*
- *A chance for private enterprise downstream projects – 5,000 tons of aluminium per year to be sold to local entrepreneurs*
- *Development of the technical skills of citizens of Trinidad and Tobago through extensive training programs, at similar facilities abroad and locally, utilizing existing technical schools and training programs, along with on the job training.*
- *Establish Trinidad & Tobago as an important transformation centre for aluminium.*
- *Opportunity for Trinidad and Tobago to develop skills and technology in the aluminium conversion industry*
- *Give benefits to Trinidad and Tobago from more than \$300M/yr of high tech and high value added exports".⁹³⁰*

512. The Senator also noted that Trinidad and Tobago had *"done its due diligence and [had] determined that the project offers a number of present and future benefits both in terms of revenue generation and in terms of its offerings for the development of new entrepreneurial ventures and a cadre of professionals and technicians with new skill sets".⁹³¹*

⁹³⁰ **C-0219**, Address by Senator the Honourable Conrad Enill, Minister of Energy and Energy Industries, at the Signing Ceremony of the Alutrint/Votorantim Project Agreement dated 4 December 2009, pp. 11-19.

⁹³¹ *Id.*, pp. 22 – 23.

513. Additionally, a Cabinet Note in July 2010 estimated that the Project would create 7,000 downstream jobs.⁹³²
514. The investments the Claimant made in the Project directly benefitted the State's economy. Up until 2010, CMEC dispatched almost 300 personnel⁹³³ and retained the services of more than seven local firms in Trinidad and Tobago.⁹³⁴ At peak times, there were over 200 full-time construction workers dedicated to the Project.⁹³⁵
515. But for State's wrongful actions, CMEC would have produced major socio-economic benefits for Trinidad and Tobago. These economic benefits, as indicated above, would have included the creation of 700 direct jobs, 2,100 indirect jobs, and 7,000 downstream jobs locally, not to mention the high-value capacity building as well as technological and know-how transfers entailed (as pointed out by the Minister during his speech).
516. Conclusion on *ratione materiae*: Even if the *Salini* jurisdictional approach were applied in this case, the above analysis demonstrates that the Claimant's investments feature all the *Salini* investment characteristics. Indeed, the investment at issue in *Salini*, which was held to be an investment under the ICSID Convention, was a construction contract.⁹³⁶

(d) Jurisdiction *ratione personae*

517. The State is a Contracting State to the ICSID Convention: Trinidad and Tobago signed the ICSID Convention on 5 October 1966, deposited its instrument of ratification on 3 January 1967, and the Convention entered into force for Trinidad and Tobago on 2 February 1967.⁹³⁷

⁹³² **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, paras. 22-23 ("Key benefits to Trinidad and Tobago's development").

⁹³³ **C-0251**, Letter from CMEC to MEEA dated 20 August 2010, p. 2.

⁹³⁴ Witness Statement of Qingchi Wang, paras. 23 – 24, 51, 55.

⁹³⁵ **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 24.

⁹³⁶ **CL-0041**, *Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, paras. 57-58.

⁹³⁷ **CL-0051**, ICSID, List of Contracting States and Other Signatories of the ICSID Convention (ICSID/3), as of 25 August 2024, p. 5, line 4.

518. The Claimant is a company organised under the PRC laws and is therefore a national of the PRC. Because the PRC has been a member State of the ICSID Convention since February 1993,⁹³⁸ the Claimant is a national of another Contracting State as required under Article 25 of the ICSID Convention.

519. Accordingly, the Tribunal has jurisdiction *ratione personae* over the Parties to this dispute for the purposes of the ICSID Convention.

(e) Jurisdiction *ratione voluntatis*

520. Article 10 of the BIT contains the State's advance written consent to submit investment disputes with PRC nationals to ICSID. Article 10(3) provides, relevantly:

*"Where the dispute is referred to international arbitration, the investor concerned may submit the dispute [...] to [...] (a) the International Centre for the Settlement of Investment Disputes [...] having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18th March 1965".*⁹³⁹

521. In its Request for Arbitration, the Claimant consented in writing to submission of the current dispute to ICSID arbitration in the exercise of the right expressly given to it under Article 10 of the BIT.

522. Both the State and the Claimant have, therefore, provided their written consent to submission of their dispute to ICSID. Accordingly, jurisdiction *ratione voluntatis* is present for the purposes of the ICSID Convention.

523. It follows from the above that the Tribunal has jurisdiction over the Parties and their dispute in this arbitration both under the BIT and the ICSID Convention.

I. ATTRIBUTION: STATE RESPONSIBILITY FOR ALUTRINT'S CONDUCT

⁹³⁸ **CL-0051**, ICSID, List of Contracting States and Other Signatories of the ICSID Convention (ICSID/3), as of 25 August 2024, p. 2, line 5.

⁹³⁹ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10(3).

524. As explained at length above, Alutrint is State Enterprise or Agency that was founded by Trinidad and Tobago for the purpose of and charged with developing the Smelter Project. There should be no doubt that Alutrint's acts and omissions are attributable to Trinidad and Tobago, which the section below demonstrates in further detail.

I.1 Law applicable to questions of attribution

525. Attribution of Alutrint's acts and omissions to the State must be addressed by reference to both the text of the BIT and the ILC Articles.⁹⁴⁰ The ILC Articles have codified customary international law relating to attribution. As such, their provisions on attribution form part of the "*applicable principles of international law*" referred to in Article 10(4) of the BIT. They constitute a body of principles that form the starting point for investment tribunals determining issues of attribution.⁹⁴¹

526. The ILC Articles assume importance in investment treaty arbitration due to the absence of such provisions in most investment treaties and ICSID Convention.⁹⁴² Under the ILC Articles, a State is responsible (*inter alia*) for:

- (a) the conduct of an entity when that entity exercises governmental authority (Article 5); and
- (b) the conduct of private entities when acting under the instruction of, or under the direction or control of, the State (Article 8).

⁹⁴⁰ The draft articles were adopted by the ILC in August 2001 (CL-0026), and annexed to the CL-0052, General Assembly Resolution 56/83, 12 December 2001 (adopted by the General Assembly on 28 January 2002), A/56/49 (Vol.1)/Corr.4. As to their customary status, see, CL-0053, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, I.C.J. Reports 2007, p.43, para. 173.

⁹⁴¹ CL-0054, *Gustav F W Hamester v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010, para. 171; CL-0055, *Flemingo DutyFree Shop Private Limited v. Republic of Poland*, UNCITRAL, Award, 12 August 2016, para. 420.

⁹⁴² CL-0056, *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, paras. 75-76; CL-0057, *Jan de Nul NV and Dredging International NV v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008, para. 155-157; CL-0058, *Saipem SpA v. People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, para. 148.

527. To determine attribution, tribunals have looked to various factors, including ownership, control, the nature, purposes, and objectives of the entity whose actions are under scrutiny, and to the character of those actions.⁹⁴³
528. The following sections establish that Alutrint's conduct is attributable to Trinidad and Tobago because of any one of the following reasons:
- (a) Alutrint's conduct involved the exercise of governmental authority that is attributable to Trinidad and Tobago under ILC Article 5; or
 - (b) Alutrint is under the control and direction of the Trinidad and Tobago government to such an extent that its acts are attributable to Trinidad and Tobago under ILC Article 8.

I.2 Alutrint's *raison d'être* was to exercise governmental authority

529. ILC Article 5 ("*Conduct of persons or entities exercising elements of governmental authority*") provides:

*"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."*⁹⁴⁴

530. The conduct of Alutrint is attributable to Trinidad and Tobago as Alutrint is an entity "*exercising elements of governmental authority*". Article 5 sets out a functional test, namely, whether the entity is "*empowered, if only exceptionally and to a limited extent, to exercise specific functions which are akin to those normally exercised by the organs of the State*".⁹⁴⁵
531. For an act to be attributed to the State under ILC Article 5, that act must be performed by an entity:

⁹⁴³ **CL-0056**, *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, para. 76.

⁹⁴⁴ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 5.

⁹⁴⁵ **CL-0059**, J. Crawford, *State Responsibility: the General Part* (Cambridge University Press, 2013), p. 127.

- (a) empowered to exercise elements of governmental authority; and
- (b) in the exercise of the delegated governmental authority.⁹⁴⁶

532. The test to determine when an entity falls within ILC Article 5 was articulated by the *EDF (Services) Limited v. Republic of Romania* tribunal:

"[t]he fact that an entity can be classified as public or private according to the criteria of a given legal system, the existence of a greater or lesser State participation in its capital, or, more generally, in the ownership of its assets, the fact that is not subject to executive control – these are not decisive criteria for the purpose of attribution of the entity's conduct to the State. Instead, article 5 refers to the true common feature, namely that these entities are empowered, if only to a limited extent or in a specific context, to exercise specified elements of governmental authority".⁹⁴⁷

533. Examples of "governmental authority" confirmed by investment tribunals include: (a) the authority of operationally independent majority-State-owned oil companies to conduct negotiations for the grant of a concession contract;⁹⁴⁸ (b) the authority of a State-owned company to deal with and manage payments of (and to) private companies in furtherance of the host State's industrial policy;⁹⁴⁹ and (c) the authority to enter into contracts concerning a public construction project.⁹⁵⁰

534. Alutrint's empowerment by Trinidad and Tobago to exercise elements of its governmental authority first and foremost stems from the circumstances of its creation. As stated in the Request for Arbitration and recalled above, Alutrint was incorporated by the NEC to manage and represent the State's ownership of the Project.⁹⁵¹ This mission was explained in the Alutrint Meeting No. 001 Minutes: Alutrint was "assigned with

⁹⁴⁶ **CL-0060**, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, para. 191.

⁹⁴⁷ **CL-0060**, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, para. 193; **CL-0059**, J. Crawford, *State Responsibility: the General Part* (Cambridge University Press, 2013), p. 127.

⁹⁴⁸ **CL-0061**, *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Award, 12 November 2008, paras. 107-114.

⁹⁴⁹ **CL-0056**, *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, para. 78; **CL-0062**, *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Award, 13 November 2000, paras. 77-78.

⁹⁵⁰ **CL-0063**, *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009, para. 53.

⁹⁵¹ **C-0008**, Articles of Incorporation of Alutrint, dated 5 April 2005.

*overall responsibility for the Aluminium Transformation Complex – both upstream (smelter) and downstream (with the exception of the Technology Development Centre)".*⁹⁵²

535. Accordingly, the conduct of Alutrint that impacted the Claimant's investment – all further to its State-delegated responsibility for the Project as reflected in the Alutrint Meeting No. 001 Minutes – was performed by Alutrint in the exercise of such delegated governmental authority.

I.3 Alutrint was subject to the direction or control of the State

536. Alutrint's acts and omissions are also attributable to Trinidad and Tobago because they were made under the direction and control of the State. The relevant principle is codified in ILC Article 8 ("*Conduct directed of controlled by the State*"):

*"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct".*⁹⁵³

537. The test for attribution under Article 8 requires that particular measures must have been carried out under the direction or effective control of the State.⁹⁵⁴ The three terms "*instructions*", "*direction*" and "*control*" are disjunctive; in other words, it is sufficient to evidence any one of them to establish attribution.⁹⁵⁵ As the (then) Professor Crawford

⁹⁵² **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 69.

⁹⁵³ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 8.

⁹⁵⁴ **CL-0054**, *Gustav F W Hamester v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010, para. 180; **CL-0064**, *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009, paras. 124-125 and 129; **CL-0057**, *Jan de Nul NV and Dredging International NV v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008, paras. 172-173. See also, **CL-0064**, *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009, para. 130 ("*[T]he levels of control required for a finding of attribution under Article 8 [of the ILC Articles] in other factual contexts, such as foreign armed intervention or international criminal responsibility, may be different (...) [T]he approach developed in such areas of international law is not always adapted to the realities of international economic law. (...) [The levels of control required] should not prevent a finding of attribution if the specific facts of an investment dispute so warrant*").

⁹⁵⁵ **CL-0065**, *Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Award, 10 March 2014, para. 303.

noted, the instruction or direction by the State can be general instead of specific or overly formal:

*"Does the state need to direct the entity to perform the specific act, or will a more general instruction which leaves it open as a method of fulfilling the directive (or perhaps implies a preference for it) suffice? The commentary indicates that the latter position is correct, and that where ambiguous or open-ended instructions are given, acts which are considered incidental to the task in question or conceivably within its expressed ambit may be considered attributable to the state".*⁹⁵⁶

538. In *Bayindir v. Pakistan*, the wrongful acts of the National Highway Authority (NHA) were deemed attributable to the State because the State provided clearance and guidance to the NHA. Bayindir, the investor, entered into a contract with the NHA for the purpose of constructing a motorway (the M-1 Project), which the NHA terminated. The tribunal found that *"each specific act allegedly in breach of the Treaty was a direct consequence of the decision of the NHA to terminate the Contract"*. Even though the contract termination was due to the conduct of NHA, that conduct was attributed to Pakistan under ILC Article 8 because the government provided *"guidance"* and even *"clearance"* to do so.⁹⁵⁷ In addition, the government *"was involved to a certain degree"* because it *"was closely interested in this Contract"*.⁹⁵⁸
539. Likewise, in *EDF v. Romania*, the tribunal accepted that the acts of two state-owned entities were attributable to the State by virtue of ILC Article 8. The tribunal found that the Ministry of Transportation had issued instructions and directions to those state-owned entities to adopt certain conduct in the exercise of their rights as shareholders of a joint venture that in turn breached the applicable investment treaty. The tribunal found that Romania had used its ownership interest and control of the state-owned entities specifically *"in order to achieve a particular result"*, namely to bring an end to the contractual arrangements with the claimant.⁹⁵⁹

⁹⁵⁶ CL-0059, J. Crawford, *State Responsibility: the General Part* (Cambridge University Press, 2013), p. 145.

⁹⁵⁷ CL-0064, *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009, paras. 125 and 128.

⁹⁵⁸ CL-0064, *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Award, 27 August 2009, para. 126.

⁹⁵⁹ CL-0060, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, paras. 200-201.

540. Approval by a State of the conduct of a state-owned entity may also meet the direction or control test under Article 8. In *Ampal-American v. Egypt*, the tribunal found that the conduct of two Egyptian State-owned gas companies in concluding and then terminating a gas supply agreement with the claimant was attributable to Egypt because those decisions were "*all taken with the blessing of the highest levels of Egyptian Government*".⁹⁶⁰
541. In applying the same principles here:
- (a) the State is entitled to majority representation on Alutrint's board (including the right to designate the Chairman). In fact, Sural Barbados long ceased to appoint any directors such that Alutrint effectively had an all GORTT board;⁹⁶¹
 - (b) Alutrint has been designated as a "*State Enterprise*" in the energy and energy-based sector that falls under the supervision of the MEEI, which determines Alutrint's day-to-day operations according to the relevant policy mandates;⁹⁶²
 - (c) the State also exercises control over Alutrint through MOF, SCE, NGETF, NGC and NEC (as discussed above);
 - (d) the key decisions relating to the Project were all driven by the State:
 - (i) the responsibility to develop the Project was assigned to Alutrint through the Cabinet approval of 21 April 2005;⁹⁶³
 - (ii) the Project had to be suspended (the second time) from May 2010 onwards because of the lack of approval from the new administration of

⁹⁶⁰ **CL-0066**, *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, para. 146.

⁹⁶¹ The Investment Division of the Ministry of Finance of GORTT publishes details on the board of directors of Trinidad and Tobago state enterprises (including Alutrint). See, e.g., **C-0391**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 12 November 2014, p. 24. More generally, the ICC Award finds that "*Sural never had any intention of performing the Shareholders Agreement once it had decided to disengage at the end of 2007*", see **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 269.

⁹⁶² **C-0496**, Trinidad and Tobago Gazette, Vol. 62, No. 6 (Public Statement of the Ministry of Energy and Energy Industries), 13 January 2023, p. 2; **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.

⁹⁶³ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 69.

the State. During the downtime period, Alutrint indicated several times that it was awaiting the State's final decision concerning the Project;⁹⁶⁴

(iii) the Project was abandoned by a Cabinet decision of 8 September 2010;⁹⁶⁵ and

(iv) Alutrint was acting in accordance with the State's formal notification to discontinue the Project with immediate effect when it gave CMEC the notice to cease all works and the notice to demobilise in January 2012;⁹⁶⁶ and

(e) starting from no later than February 2014, the State directly interfaced with CMEC regarding CMEC's outstanding claims and the settlement negotiations relating thereto. Trinidad and Tobago has since then been interfacing with CMEC directly on all issues relating to Alutrint and has expressed an intention to settle CMEC's claims related to the EPC Contracts on multiple occasions.

542. The high degree of control the State exercised over Alutrint is vividly exposed from the following observation by Alutrint's Acting CEO in his Exit Report:

"There are signed Land and Port Agreements between Alutrint and NEC. There are some unresolved Land Lease issues that Alutrint's Legal and Finance Managers will be in a position to elaborate upon. Ultimately however, as both NEC and Alutrint report to the Minister of Energy, said issues can be addressed in a relatively straightforward manner with his intervention".⁹⁶⁷

543. This observation presents a practical insight into how the Minister of Energy possessed the ability to intervene in the affairs of Alutrint and control its conduct in both legal and commercial spheres.

⁹⁶⁴ **C-0027**, Letter from Alutrint to CMEC dated 28 October 2010 ("The second and current work stoppage period effectively resulted in May 2010 [...] Further works on the project (e.g. engineering, procurement) has not yet been progressed as one is awaiting formal approval from the new GORTT representation"); and **C-0269**, Letter from Alutrint to CMEC of 14 February 2011 ("Alutrint is diligently seeking a formal communication from the GORTT concerning a decision on our Project").

⁹⁶⁵ **C-0252**, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 11.

⁹⁶⁶ **C-0031**, Letter from Alutrint to CMEC dated 23 January 2012.

⁹⁶⁷ Exit Report of Alutrint's Acting CEO P. Julien as of 30 October 2011, p. 6,

544. The above section demonstrates that Trinidad and Tobago "*instructed*", "*directed*", and "*controlled*" Alutrint, such that the latter's conduct is entirely attributable to the State.

I.4 Conclusion

545. In conclusion, the measures of Alutrint are clearly attributable to the State on two independent grounds: (i) because it was created to and did exercise governmental functions and (ii) because it acted pursuant to the direction and/or control of the government of Trinidad and Tobago.

J. VIOLATIONS OF THE BIT AND INTERNATIONAL LAW

J.1 Expropriation

(a) Applicable BIT provisions

546. The applicable provision for the Claimant's expropriation claim is Article 6 of the BIT, which provides:

- "1. *Neither Contracting Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, except:*
- (a) for the public purpose;*
 - (b) under domestic law;*
 - (c) without discrimination;*
 - (d) against compensation.*
2. *The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or before the impending expropriation becomes public knowledge, whichever is the earlier. The value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall be made without delay, be effectively realizable and be freely transferable.*

3. *The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.*"⁹⁶⁸

547. Article 6(1) serves as the *lex specialis* of expropriation in this case. The Claimant makes four observations in regard to this provision.

- (a) As is often the case in investment treaties, the definition of "*expropriation*" in Article 6(1) of the BIT is partially recursive (i.e. it uses the term "*expropriation*" to define "*expropriation*"). Applying Article 31 of the Vienna Convention (particularly with reference to Article 31(3)(c)),⁹⁶⁹ the ordinary meaning of the term "*expropriation*" must necessarily be ascertained by reference to its meaning at international law, the applicable *lex generalis*. According to the classic international law treatise, *Oppenheim's International Law*, "[e]xpropriation conveys in a general sense a deprivation of a former property owner of this property, and is equivalent to a 'taking' of property."⁹⁷⁰ In its purest forms, expropriation is direct. It involves property seizure (e.g. "*governmental authorities take over a mine or factory, depriving the investor of all meaningful benefits of ownership and control*")⁹⁷¹ or forced transfer of legal title (e.g. "*a compulsory transfer of property rights*").⁹⁷² Indirect expropriation, on the other hand, requires neither legal title nor beneficial title to be taken⁹⁷³ but hinges on

⁹⁶⁸ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6.

⁹⁶⁹ **CL-0021**, Vienna Convention on the Law of Treaties (Vienna Convention), signed 23 May 1969, entered into force 27 January 1980, Art. 31.

⁹⁷⁰ *Oppenheim's International Law* (9th ed, 1996) Vol 1 Peace, p. 916, footnote 9, cited in **CL-0067**, C. McLachlan, L. Shore and M. Weiniger, *International Investment Arbitration: Substantive Principles*, "8. Expropriation" (Oxford International Arbitration Series, Volume 2nd ed, 2017), pp. 359 – 412, para. 8.68.

⁹⁷¹ **CL-0068**, *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, para. 100.

⁹⁷² **CL-0069**, *Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited*, IUSCT (Iran-US Claims Tribunal) Case No. 56, Partial Award No.310-56-3, 14 July 1987, para. 108.

⁹⁷³ See for example, **CL-0070**, *Quiborex S.A. and Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, para. 237 ("*Measures other than actual takings or formal transfers of title may amount to indirect expropriation or measures tantamount to expropriation*").

the occurrence of a substantial deprivation and a lasting interference, as discussed below.

- (b) Article 6 refers not only to expropriation but also to "*other similar measures*". The open-textured language of this term leads to the conclusion that its ordinary meaning includes non-direct forms of expropriation, for example, creeping expropriation or indirect expropriation that falls short of direct seizure of assets. This interpretation is supported by the judgment of the High Court of England and Wales in *GPF FP S.à.r.l. v. The Republic of Poland*.⁹⁷⁴ In this case the High Court held that the words "*expropriation, nationalization or any other similar measures affecting investments*" in Article 9.1 of the BIT between Poland, Belgium, and Luxembourg "[o]n their ordinary meaning [...] clearly encompass all forms of expropriation be they direct or indirect including creeping expropriation".⁹⁷⁵
- (c) Article 6(1) contains no conjunction (i.e. "*and*" or "*or*") between sub-paragraphs (c) ("*without discrimination*") and (d) ("*against compensation*"). The widespread understanding under international law (the *lex generalis*) is that the conditions in such sub-paragraphs are cumulative and non-compliance with any one is sufficient to give rise to an unlawful expropriation.⁹⁷⁶ As Professors Dolzer, Kriebaum and Schreuer observe in their work *Principles of International Investment Law*:

"It is generally accepted that the legality of a measure of expropriation is conditioned on three (or four) requirements. These requirements are explicitly stated in most treaties. They are also regarded as part of customary international law. These requirements must be fulfilled cumulatively: [...] The measure must serve a public purpose [...] The measure must not be discriminatory [...] the procedure of expropriation must follow the principles of due process [...] The expropriatory

⁹⁷⁴ **CL-0071**, *GPF GP S.à.r.l v. Poland*, SCC Case No. 2014/168, Judgment of the UK High Court on the Set Aside Application, [2018] EWHC 409, 2 March 2018.

⁹⁷⁵ **CL-0071**, *GPF GP S.à.r.l v. Poland*, SCC Case No. 2014/168, Judgment of the UK High Court on the Set Aside Application, [2018] EWHC 409, 2 March 2018, para. 88.

⁹⁷⁶ As noted in *Crystallex v. Venezuela*: "[w]hen a treaty cumulatively requires several conditions for a lawful expropriation, arbitral tribunals seem uniformly to hold that failure of any one of those conditions entails a breach of the expropriation provisions". **CL-0072**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 716.

measure must be accompanied by prompt, adequate and effective compensation."⁹⁷⁷

Accordingly, unless Trinidad and Tobago satisfy all of the four conditions set out in sub-paragraphs (a) to (d), it will violate the BIT's provisions on lawful expropriation. If that is the case, it will be breaching an international agreement and committing an unlawful act under international law for which reparations will be due to the aggrieved investor.⁹⁷⁸

- (d) The *lex specialis* compensation regime in Article 6(2) applies to lawful expropriation. This is clear from the cross reference in Article 6(2) to "[t]he compensation [required for a BIT permitted expropriation] mentioned in Paragraph 1 of this Article shall be equivalent to the market value of the expropriated investments [...]". No language in Article 6 specifies the applicable compensation regime in the event the expropriation (direct or indirect) is unlawful, as is the case here. Where the expropriation is unlawful, the regime for compensation (including the measure of damages) is derived from rules of international law that govern reparations. This was the approach taken by the tribunal in the seminal case of *ADC v. Hungary*⁹⁷⁹ and it has been followed by many tribunals since.⁹⁸⁰

548. As foreshadowed above and explained further below, the expropriation in this case is indirect in nature; in some respects, it was creeping; and in all respects it was unlawful because the State did not meet any of the threshold conditions for a lawful expropriation under Article 6 of the BIT.

⁹⁷⁷ **CL-0073**, R. Dolzer, U. Kriebaum and C. Schreuer, "Expropriation", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), pp. 183-184 (original emphases).

⁹⁷⁸ **CL-0074**, J. Crawford, *Brownlie's Principles of Public International Law*, Part X – The protection of individuals and groups (Oxford University Press, 8th ed., 2012), p. 625.

⁹⁷⁹ **CL-0075**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, paras. 481-486.

⁹⁸⁰ See for example, **CL-0076**, *UP and C.D Holding Internationale (formerly Le Cheque Dejeuner) v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, para. 560; **CL-0077**, *(DS)2, S.A., Peter de Sutter and Kristof De Sutter v. Republic of Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020, para. 399; **CL-0078**, *OAO "Tatneft" v. Ukraine*, PCA Case No. 2008-8, Award on the Merits, 29 July 2014, para. 540; **CL-0079**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, paras. 509-510.

(b) Most favoured nation treatment

549. Another relevant provision of the BIT for the Claimant's expropriation claim is the most favoured nation (**MFN**) clause in Article 4(3), which provides:

*"Neither Contracting Party shall subject investments or returns and activities associated with the investments by the investors of the other Contracting Party to treatment less favourable than that accorded to the investments or returns and associated activities by the investors [sic] of investors of any third State."*⁹⁸¹

550. This MFN clause is broad in scope. It enables the Claimant to rely on better substantive protections accorded by Trinidad and Tobago to investors of third States under treaties Trinidad and Tobago has signed with those third States ("*comparator treaties*").⁹⁸² A comparator treaty that is relevant to the Claimant's expropriation submissions is the 1994 Trinidad and Tobago-United States Bilateral Investment Treaty (**US BIT**).⁹⁸³ The Claimant invokes the MFN clause in Article 4(3) of the BIT to import Article III(1) and (2) of the US BIT. These US BIT provisions provide:

"1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as 'expropriation') except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(3).

*2. Compensation shall be paid without delay, be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken ('the date of expropriation'), and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation."*⁹⁸⁴

⁹⁸¹ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 4(3).

⁹⁸² **CL-0080**, R. Dolzer, U. Kriebaum and C. Schreuer, "Standards of Protection", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022) para. 269 ("[I]t is widely accepted that investors may rely on MFN clauses to claim a better substantive treatment by a host State to investors of third States").

⁹⁸³ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996.

⁹⁸⁴ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996, Art. III, p. 21.

551. The cross reference in this expropriation provision to Article II(3) of the US BIT adds two further requirements for a lawful expropriation – compliance with fair and equitable treatment standards, as well as the prohibition of impairment by unreasonable or discriminatory measures. Article II(3) provides:

"(a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

*(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments."*⁹⁸⁵

552. The Claimant relies on these provisions of the US BIT, including the Article III(1) requirement of "*due process of law*" in an expropriation, to the extent that they accord treatment to investments that is more favourable than that accorded under the BIT.

(c) Rules of international law

553. As observed above, if the *lex specialis* on expropriation (Article 6 of the BIT) is not explicit or silent on a point, the Tribunal may be guided by rules of international law to understand the implication of the silence and to decide the Claimant's expropriation claim by applying the *lex generalis*.

554. As identified above, three relevant issues are not explicitly addressed in Article 6: whether it covers (a) indirect expropriation, (b) creeping expropriation and (c) reparations for breach. While it is generally accepted that these three issues apply to treaty provisions such as Article 6, if there is any doubt (which is denied), the Tribunal may apply rules of international law as *lex generalis* to determine whether indirect or creeping expropriation fall within the scope of Article 6 and, if they have occurred, whether international law reparations are due. The rules governing indirect and creeping expropriation are discussed in this section. The international law rules that govern reparations for unlawful expropriation are discussed in the Damages section of this Memorial of Claim (Section L below).

⁹⁸⁵ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996, Art. II(3), p. 20.

(i) Indirect expropriation

555. The first issue to be addressed in this section is whether the words "*other similar measures*" in Article 6 of the BIT covers indirect expropriation. This issue has been answered in the affirmative above: the ordinary meaning of the terms signal that they cover indirect expropriation and this interpretation has been confirmed (albeit in another BIT containing similar wording) by the High Court of England and Wales in *GPF FP S.à.r.l. v. The Republic of Poland*.⁹⁸⁶
556. The second issue raised by Article 6 is that, aside from the compound requirements for a lawful expropriation under Article 6, it provides no further guidance on the content of an indirect expropriation. Reference to established principles of international law is therefore necessary.
557. The 1961 *Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens* defined indirect expropriation as "*any such unreasonable interference with the use, enjoyment or disposal of property as to justify an inference that the owner thereof will not be able to use, enjoy or dispose of the property within a reasonable period of time after the inception of such interference*".⁹⁸⁷
558. In the American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States*, indirect expropriation was characterised as "*action that is confiscatory, or that prevents, unreasonably interferes with, or unduly delays, effective enjoyment of an alien's property*".⁹⁸⁸
559. There is *jurisprudence constante* to the effect that a claimant must establish an indirect by showing that the measure:

⁹⁸⁶ **CL-0071**, *GPF GP S.à.r.l v. Poland*, SCC Case No. 2014/168, Judgment of the UK High Court on the Set Aside Application, [2018] EWHC 409, 2 March 2018.

⁹⁸⁷ **CL-0082**, L. B. Sohn and R. R. Baxter, *Responsibility of States for Injuries to the Economic Interests of Aliens: II. Draft Convention on the International Responsibility of States for Injuries to Aliens*, 1961, *The American Journal of International Law*, Jul., 1961, Vol. 55, No. 3 (Jul., 1961), pp. 548-584, Art. 10(3).

⁹⁸⁸ *Restatement of the Law (Third), Foreign Relations of the United States*, American Law Institute, 1987, Vol. 2 section 712, para. g, p. 200 cited in **CL-0083**, R. Dolzer and F. Bloch, *Indirect Expropriation: Conceptual Realignments?*, *International Law FORUM du droit international*, Volume 5, No. 3, August 2003, p. 157.

- (a) amounted to a "*substantial deprivation*" of the value of the investment or the use or reasonably-to-be-expected economic benefit of the investment; and
- (b) was of sufficient duration.

560. Regarding the first element, examples of tribunals dealing with "*substantial deprivation*" include:

- (a) *Burlington Resources v. Ecuador*: "[w]hen a measure affects the environment or conditions under which the investor carries on its business, what appears to be decisive, in assessing whether there is a substantial deprivation, is the loss of the economic value or economic viability of the investment. In this sense, some tribunals have focused on the use and enjoyment of property. The loss of viability does not necessarily imply a loss of management or control. What matters is the capacity to earn a commercial return. After all, investors make investments to earn a return. If they lose this possibility as a result of a State measure, then they have lost the economic use of their investment."⁹⁸⁹
- (b) *Metalclad v. Mexico*: a host State's measure deprives the investor "*in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property*".⁹⁹⁰
- (c) *GAMI Investments Inc v. Mexico*: substantial deprivation occurs where the affected property is impaired to such an extent that it must be seen as "*taken*".⁹⁹¹
- (d) *Eastern Sugar BV v. Czech Republic*: substantial deprivation can occur where there is a deprivation of the entire investment or a substantial part of the investment.⁹⁹²

⁹⁸⁹ **CL-0084**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012, para. 397.

⁹⁹⁰ **CL-0085**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 103.

⁹⁹¹ **CL-0086**, *GAMI Investments, Inc. v. The Government of the United Mexican States*, UNCITRAL (NAFTA), Final Award, 15 November 2004, para. 126.

⁹⁹² **CL-0087**, *Eastern Sugar B.V. v. The Czech Republic*, SCC Case No. 088/2004, Partial Award, 27 March 2007, para. 210.

- (e) *Tecmed SA v. Mexico*: substantial deprivation occurs where the investor is "[r]adically deprived of the economical use and enjoyment of its investments, as if the rights related thereto [...] had ceased to exist. In other words, if due to the actions of State, the assets involved have lost their value or economic use for their holder".⁹⁹³
- (f) *CME v. Czech Republic*: substantial deprivation occurs where a measure effectively neutralises the benefit of the property of the foreign owner.⁹⁹⁴

561. In practice, the element of "*substantial deprivation*" entails a factual inquiry into the economic effect of the measure. The Claimant discusses in detail the effects of the measures at issue in this case in the Particulars of Claim section below.

562. As to the element of duration, a number of international tribunals have approached this as a question of whether the measures were more than "*ephemeral*". Examples of this approach include:

- (a) *Wena Hotels v. Egypt*, where the tribunal held that an Egyptian public-sector company's seizure of two hotels for one year, following a dispute over lease terms, was more than an "*ephemeral interference*" and amounted to an expropriation.⁹⁹⁵
- (b) *Tippetts v. TAMS-AFFA*, where the Iran-US Claims Tribunal held that despite Iran's appointment of "*temporary managers*" to oversee a company, what mattered was whether "*events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral*".⁹⁹⁶

⁹⁹³ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 115.

⁹⁹⁴ **CL-0089**, *CME Czech Republic B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 para. 604.

⁹⁹⁵ **CL-0090**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 99.

⁹⁹⁶ **CL-0091**, *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*, IUSCT (Iran-US Claims Tribunal) Case No. 7, Award No. 141-7-2, 22 June 1984, para. 22.

- (c) *Khan Resources v. Mongolia*, where the claimants were held to have been substantially deprived of their uranium mining and exploration licences through the combined effect of a three-month temporary suspension of the two licenses, temporary invalidation notices and the Mongolian Nuclear Energy Agency's subsequent failure to re-register them.⁹⁹⁷
- (d) *PACC v. Mexico*, in which Professor Reisman stated in his Concurring and Dissenting Opinion that the duration of an expropriation needs to be treated realistically and that this duration may be shorter for "*expropriatory measures which produce significant injury for complex investments which coordinate equipment and assembly of crew, schedules with other operators, etc.*"⁹⁹⁸

563. These decisions show that the element of duration relates to whether the impugned measure had a lasting interference on the investment. While some tribunals have approached duration through the lens of "*permanence*", even that approach is still subject to an objective appraisal of the situation of the investor and its investments. This was acknowledged in *S.D. Myers v. Canada*, where the tribunal observed that:

*"An expropriation usually amounts to a lasting removal of the ability of an owner to make use of its economic rights although it may be that, in some contexts and circumstances, it would be appropriate to view a deprivation as amounting to an expropriation, even if it were partial or temporary".*⁹⁹⁹

564. Similarly, as noted in the explanatory note to Article 10(3) of the *Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens* (1961), "*there obviously comes a stage at which an objective observer would conclude that there is no immediate prospect that the owner will be able to resume the enjoyment of his property*".¹⁰⁰⁰ The Claimant approaches the element of duration using the "*lasting*"

⁹⁹⁷ **CL-0092**, *Khan Resources Inc., Khan Resources B.V., and CAUC Holding Company Ltd. v. The Government of Mongolia*, PCA Case No. 2011-09, Award, 2 March 2015, para. 310.

⁹⁹⁸ **CL-0093**, *PACC Offshore Services Holdings Ltd v. United Mexican States*, ICSID Case No. UNCT/18/5, Award, 11 January 2022, Concurring and Dissenting Opinion of Professor W. Michael Reisman, para. 74.

⁹⁹⁹ **CL-0094**, *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (Merits), 13 November 2000, para. 283.

¹⁰⁰⁰ **CL-0082**, L. B. Sohn and R. R. Baxter, *Responsibility of States for Injuries to the Economic Interests of Aliens: II. Draft Convention on the International Responsibility of States for Injuries to Aliens*, 1961, *The American Journal of International Law*, Jul., 1961, Vol. 55, No. 3 (Jul., 1961), pp. 548-584, Art. 10(3).

interference formulation that emerges from the decisions referred to the paragraphs above.

565. The Claimant applies the rules of "*substantial deprivation*" and "*lasting*" interference in its submissions below. The Claimant also addresses other factors that the jurisprudence indicates are relevant to — though not determinative of — indirect expropriation, including the extent to which the measures frustrated the investor's reasonable expectations.¹⁰⁰¹

(ii) Creeping expropriation

566. As indicated above, Article 6 of the BIT is silent on the doctrine of creeping expropriation. The Tribunal may therefore resort to *lex generalis* for its definition, substantive elements and application. As with indirect expropriation generally, the *lex specialis* of Article 6 is otherwise applicable. In other words, the State must still comply with the compound requirements of Article 6 for a creeping expropriation to be lawful under the BIT.
567. There is no fixed definition of creeping expropriation under international law. As already noted, creeping expropriation is generally considered as a sub-category of indirect expropriation.¹⁰⁰² The United Nations has offered the following definition:

*"Creeping expropriation may be defined as the incremental encroachment on one or more of the ownership rights of a foreign investor that eventually destroys (or nearly destroys) the value of his or her investment or deprives him or her of control over the investment. A series of separate State acts, usually taken within a limited time span, are then regarded as constituent parts of the unified treatment of the investor or investment."*¹⁰⁰³

¹⁰⁰¹ For the avoidance of doubt, where the Claimant applies the factors such as "*reasonable expectations*", it does so without prejudice to its submission that the elements of "*substantial deprivation*" and "*lasting*" interference are all that need be satisfied for a finding of indirect expropriation in this case (in addition to an analysis of whether the compound requirements of Article 6(1) were satisfied).

¹⁰⁰² **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 114 ("[T]hrough actions or conduct, which do not explicitly express the purpose of depriving one of rights or assets, but actually have that effect. This type of expropriation does not necessarily take place gradually or stealthily — the term "*creeping*" refers only to a type of indirect expropriation — and may be carried out through a single action, through a series of actions in a short period of time or through simultaneous actions").

¹⁰⁰³ **CL-0095**, UNCTAD, *Expropriation*, UNCTAD Series on Issues in International Investment Agreements II, United Nations, 2012, p. 11.

568. The notion of "*creeping expropriation*" was considered in detail by the tribunal in *Compañía del Desarrollo de Santa Elena, S.A v. Costa Rica*:

*"The period of time involved in the process [in which a State takes control over a property] may vary—from an immediate and comprehensive taking to one that only gradually and by small steps reaches a condition in which it can be said that the owner has truly lost all the attributes of ownership. It is clear, however, that a measure or series of measures can still eventually amount to a taking, though the individual steps in the process do not formally purport to amount to a taking or to a transfer of title. What has to be identified is the extent to which the measures taken have deprived the owner of the normal control of his property."*¹⁰⁰⁴

569. Reisman and Sloane helpfully articulate how a series of non-expropriatory acts transforms into an expropriation:

*"Discrete acts, analysed in isolation rather than in the context of the overall flow of events, may, whether legal or not in themselves, seem innocuous vis-a-vis a potential expropriation. Some may not be expropriatory in themselves. Only in retrospect will it become evident that those acts comprised part of an accretion of deleterious acts and omissions, which in the aggregate expropriated the foreign investor's property rights."*¹⁰⁰⁵

570. In *Generation Ukraine v. Ukraine*, the tribunal took the view that creeping expropriation has "*a distinctive temporal quality in the sense that it encapsulates the situation whereby a series of acts attributable to the State over a period of time culminate in the expropriatory taking of such property*".¹⁰⁰⁶

571. The "*distinctive temporal quality*"¹⁰⁰⁷ of creeping expropriation identified in *Generation Ukraine* arises from the fact that creeping expropriation takes place over a period of time. The question to be determined in this circumstance is: when does the actual breach arise? Where composite acts are concerned, as is the case in a creeping expropriation,

¹⁰⁰⁴ **CL-0096**, *Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, para. 76.

¹⁰⁰⁵ **CL-0097**, W. M. Reisman & R. D. Sloane, *Indirect Expropriation and Its Valuation in the BIT Generation* (74 The British Yearbook of International Law 115, 2004), pp. 123-124.

¹⁰⁰⁶ **CL-0098**, *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, para. 20.22.

¹⁰⁰⁷ **CL-0098**, *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, para. 20.22.

the international law analysis is controlled by the ILC Article 15, which is accepted as reflecting customary international law and reads as follows:

"Article 15

Breach consisting of a composite act

1. *The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.*
2. *In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.*"¹⁰⁰⁸

572. Determining the first and last act in the series of acts constituting a creeping expropriation is a broadly construed fact-specific exercise. The act that inaugurates the series will usually be apparent only after a series of relevant acts occurs. As the Commentary to the ILC Articles explains, "[t]he status of the first action or omission is equivocal until enough of the series has occurred to constitute the wrongful act".¹⁰⁰⁹
573. The identification of the last or culminating act ultimately turns on whether that act is, when taken with the other acts or omissions which preceded it, sufficient to render the series an unlawful act. The tribunal in *Siemens v. Argentina* described this last act in a creeping expropriation as one that "is similar to the straw that breaks the camel's back. The preceding straws may not have had a perceptible effect but were part of the process which led to the break".¹⁰¹⁰
574. To conclude, the rules of international law require that for a "creeping expropriation" to be established, the Claimant must show that:

¹⁰⁰⁸ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 15.

¹⁰⁰⁹ **CL-0099**, United Nations, *Draft articles on responsibility of States for internationally wrongful acts (with commentaries)*, Yearbook of the International Law Commission, 2001, Volume II, Part Two (A/CN.4/SER.A/2001/Add.1 (Part 2)), p. 63, para. 10.

¹⁰¹⁰ **CL-0100**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, para. 263.

- (a) the State has engaged in a series of acts or omissions; and
- (b) the acts or omissions in the series culminated:
 - (i) to destroy (or substantially reduce) the value the investment; or
 - (ii) to deprive the investor of control over its investment.

575. The Claimant applies these rules in the discussion of its creeping expropriation claim below.

(iii) Reasonable expectations

576. Reasonable expectations may provide an important reference point against which the validity of an expropriation claim can be assessed.¹⁰¹¹ The jurisprudence shows that the claimant investor's reasonable expectations may play a role in establishing that the impugned government conduct was expropriatory.

577. In *Tecmed*, for example, the tribunal held that a taking without compensation "*leads to the neutralization of the investment's economic and business value and the Claimant's return on investment and profitability expectations upon making the investment.*"¹⁰¹² In deciding that Mexico's conduct amounted to an expropriation in that case, the *Tecmed* tribunal observed:

"even before the Claimant made its investment, it was widely known that the investor expected its investments in the Landfill to last for a long term and that it took this into account to estimate the time and business required to recover such investment and obtain the expected return upon making its tender offer for the acquisition of the assets related to the Landfill. To evaluate if the actions attributable to the Respondent — as well as the Resolution — violate the

¹⁰¹¹ **CL-0067**, C. McLachlan, L. Shore and M. Weiniger, *International Investment Arbitration: Substantive Principles*, "8. Expropriation" (Oxford International Arbitration Series, Volume 2nd ed, 2017), pp. 359 – 412, para. 8.121. Dolzer, Kriebaum and Schreuer also comment that "[I]legitimate expectations play a key role in the interpretation of the fair and equitable treatment standard, but they have also entered the law governing indirect expropriations". **CL-0073**, R. Dolzer, U. Kriebaum and C. Schreuer, "Expropriation", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), p. 171, para. (g).

¹⁰¹² **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 149.

*Agreement, such expectations should be considered legitimate and should be evaluated in light of the Agreement and of international law."*¹⁰¹³

578. The Claimant's legitimate expectations where relevant are addressed below.

(d) Particulars of claim

579. In this section, the Claimant particularises its expropriation claims against the State. For each claim, the Claimant first addresses the requirements of Article 6 of the BIT. On any view, the State met none of the conditions for a lawful expropriation set out in this provision. The Claimant then applies the applicable rules of international law as the applicable law to determine an unlawful expropriation that takes place outside the contours of Article 6.

(i) Expropriation Claim 1: Indirect expropriation through Discontinue Order, Cease Works Order and/or Demobilise Order

580. The State is responsible for three acts of expropriation, each of which separately constitute an indirect expropriation, or together constitute a composite act of expropriation. These three acts took place between 9 and 23 January 2012.

(a) On 9 January 2012, the Permanent Secretary of GORTT wrote to Mr Steve Mohammed, the Acting Chief Executive Officer of Alutrint, informing him that "*that the Alutrint Smelter Project [...] be discontinued with immediate effect*" (**Discontinue Order**).¹⁰¹⁴

(b) On 19 January 2012, Alutrint notified CMEC of the Permanent Secretary's Discontinue Order and that CMEC should accordingly "*cease all works and activities pertaining to Alutrint Aluminium Smelter Project*" (**Cease Works Order**).¹⁰¹⁵

¹⁰¹³ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 150.

¹⁰¹⁴ **C-0308**, Letter from MEEA to Alutrint dated 9 January 2012.

¹⁰¹⁵ **C-0030**, Letter from Alutrint to CMEC dated 19 January 2012.

- (c) On 23 January 2012, in addition to the Cease Works Order, Alutrint ordered CMEC to "*formally demobilise completely all CMEC's assets (including equipment and materials) from the Project Site*" (**Demobilise Order**).¹⁰¹⁶

581. Together, these orders are referred to as the "**Expropriation Orders**". If any doubt exists that either the Discontinue Order or the Cease Works Order did not end the Project (which is denied), this doubt cannot persist if these two Orders are considered alongside the Demobilise Order.

(1) BIT requirements for expropriation

582. Dealing first with the requirements under the BIT, the Expropriation Orders (individually or collectively) constituted an unlawful expropriation because the lawful expropriation requirements under Article 6 of the BIT have not been satisfied.

583. First, the termination of the Project was not for a "*public purpose*" as required by the first limb of Article 6(1).

- (a) As held by the tribunal in *Vestey v. Venezuela*, the disputed measure must have had "*a reasonable nexus with the declared public purpose.*"¹⁰¹⁷ No cogent reason was given for the termination. The absence of a clearly articulated public purpose, or an explanation as to how the termination was reasonably related to the fulfilment of that purpose,¹⁰¹⁸ alone negates any claim the State may have to satisfaction of the first condition of a lawful expropriation under Article 6 of the BIT. The reality is that no legitimate policy goal was sought to be advanced by the termination of the Project; the underlying reason was to further the political interests of the UNC.

- (b) The record clearly shows, as detailed in Section E.8 above, that the discontinuance of the Project was inherently political. As the current Prime

¹⁰¹⁶ **C-0031**, Letter from Alutrint to CMEC dated 23 January 2012.

¹⁰¹⁷ **CL-0101**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, para. 296.

¹⁰¹⁸ See for example, **CL-0102**, *British Caribbean Bank Ltd. v. The Government of Belize*, PCA Case No. 2010-18, Award, 19 December 2014, para. 241 in which the tribunal held that the public purpose requirement in a treaty expropriation provision obliged the respondent State to "*set out the public purpose for which the expropriation was undertaken and offer a prima facie explanation of how the acquisition of the particular property was reasonably related to the fulfilment of that purpose*".

Minister of Trinidad openly declared: the State's government "*improperly shut down*" and "*politically extinguished*" the Project.¹⁰¹⁹ Section G has discussed the practice of international courts and tribunals in relation to granting evidentiary weight to the statements of high-ranking political figures. This statement by the highest-ranking politician in Trinidad and Tobago cannot be disregarded and must have substantial probative value.

- (c) The reality was that the Project was beneficial to the public and to Trinidad and Tobago in general. In 2010, residents of La Brea (where the Project was located) staged protests to demand a reconsideration of the decision to stop the construction of the smelter, highlighting the jobs and infrastructure and social development it would generate.¹⁰²⁰ And around the same time, a newspaper article titled *Rowley: Decision to Scrap the Smelter a Political Move* reported that the then Leader of the Opposition (and now Prime Minister) Dr Keith Rowley stated that the decision was based on "*purely political considerations*" despite of the smelter's economic benefits.¹⁰²¹

584. Second, the Project termination did not comply with the Article 6(1) "*without discrimination*" requirement:

- (a) The State subjectively targeted the Claimant's investments. As the Trinidad and Tobago Prime Minister declared in his speech in 2020, the Claimant was "*chased out*" of the country by the prior Government.¹⁰²² The Claimant notes that under international law, in assessing whether an unlawful expropriation has

¹⁰¹⁹ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

¹⁰²⁰ **C-0255**, A. Llanos, *Don't stop the smelter*, Trinidad and Tobago Guardian, 16 September 2010.

¹⁰²¹ **C-0258**, M. Fraser, *Rowley: Decision to scrap smelter a political move*, Trinidad and Tobago Express, 3 October 2010.

¹⁰²² **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

occurred, the Tribunal "*must consider all the relevant circumstances, including the government's post-expropriation conduct*".¹⁰²³ Accordingly, timing of the Prime Minister's speech, if that is any way an issue (which is denied), should have no consequence on its probative value, and it should be admissible evidence of the Government's discriminatory intent at the time the measures were taken in January 2012.

- (b) The targeting of the Claimant's investments – including by reason of its nationality – is similarly evident from public statements by government officials in the lead up to the Project's termination by the State. Most notably, as stated above, former Energy Minister Carolyn Seepersad-Bachan declared upon review of the Project that she was "*not convinced by them since it was not Norwegian but Chinese who were involved in the construction of the smelter plant*"; "***I am not confident they [i.e. the Chinese] can build a plant in accordance with standards***" (emphasis added).¹⁰²⁴

585. Third, the Project termination was carried out without compensating the Claimant for the expropriation of its rights under the EPC Contracts as required under Article 6. The BIT required the compensation to "*be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or before the impending expropriation becomes public knowledge, whichever is earlier*."¹⁰²⁵ The absence of compensation alone renders the expropriation unlawful and engages the State's obligation to pay reparations under international law for this wrongful act.

586. Fourth, while the BIT expropriation provision does not include an express due process condition, the Claimant is entitled to due process prior to an expropriation of its covered investments by virtue of the MFN clause in Article 4(3) of the BIT, read with Article III(1) and (2) of the US BIT.¹⁰²⁶ As discussed in sub-section (b) above, the Claimant is

¹⁰²³ **CL-0101**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, para. 296.

¹⁰²⁴ **C-0226**, C. Asson, *COP knocks Govt on Alutrint*, Trinidad and Tobago Newsday, 15 March 2010.

¹⁰²⁵ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6(2).

¹⁰²⁶ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996, Art. III, p. 21.

entitled to import the Article III(1) and (2) of the US BIT, which requires that a lawful expropriation must be carried out "*in accordance with due process of law*".¹⁰²⁷

- (a) Case law and commentary show beyond doubt that reasonable advance notice is part of due process.¹⁰²⁸ Moreover, due process – and, as part of it, reasonable advance notice – is required under the customary international law of expropriation. According to Dolzer and Stevens:

*"it may be assumed that where the term 'due process of law' is incorporated in a treaty its use is not necessarily identical to what may be the case in domestic law. In an international instrument, the requirement would suggest that the investor for example has the right to advance notification and a fair hearing before the expropriation takes place; and that the decision be taken by an unbiased official after the passage of a reasonable period of time."*¹⁰²⁹

- (b) In applying the above approach under international law, it is apparent that during the State's expropriation process, which include the Expropriation Orders as well as the 8 September 2010 notice, the Claimant was not given notice that its investment would be expropriated and not afforded an opportunity to consult or submit its views or objections as to a contemplated expropriation in a fair, open and meaningful process. Again, because the conditions for a lawful expropriation under the BIT are cumulative, the lack of due process alone engages the State's international responsibility. To the extent any authority is needed for that proposition, the Claimant refers to *Kardassopoulos v. Georgia*, in which the tribunal held that the absence of due process is sufficient to support a finding that the expropriation was wrongful.¹⁰³⁰

¹⁰²⁷ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996, Art. III(1), p. 21.

¹⁰²⁸ **CL-0075**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, para. 435; **CL-0079**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, paras. 395-397; **CL-0103**, A. Newcombe and L. Paradell Trius, *Law and Practice of Investment Treaties: Standards of Treatment*, "Chapter 7 – Expropriation", Kluwer Law International, 2009, pp. 321-398, p. 375, para. 7.34.

¹⁰²⁹ **CL-0104**, R. Dolzer and M. Stevens, *Bilateral Investment Treaties*, "Chapter Four - Expropriation" (Martinus Nijhoff Publishers, 1995), p. 106, para. 2.

¹⁰³⁰ **CL-0079**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, para. 390.

587. Fifth, by virtue of the importation of Article III(1) of the US BIT, for an expropriation to be lawful under the BIT, the State must also ensure that it is accordance "*the general principles of treatment provided for in Article II(3)*" of the US BIT¹⁰³¹. As part of this requirement, the expropriation must, among other things, be in accordance with fair and equitable treatment standards, and must align with the obligation not to impair investments by unreasonable or discriminatory measures. The State's violation of these standards is set out in Section J.2 below.

(2) Substantial deprivation

588. Turning to the applicable rules of international law, the Claimant first addresses the element of *substantial deprivation*. A practical explanation of this concept was offered by the *Burlington Resources v. Ecuador* tribunal: what is "*decisive*" is the "*loss of the economic value or economic viability of the investment*" and "*the capacity to earn a commercial return*".¹⁰³²

589. First, the premature and permanent cessation of the Project in January 2012 has from the time of that event *totally* deprived the Claimant of the use and enjoyment of its rights under the EPC Contracts, including investment returns. The Claimant had reasonable and legitimate expectations that the Project would run for several years, with a reasonable commercial return under the terms of the EPC Contracts throughout that period. That return was destroyed on 23 January 2012.

590. Second, the Expropriation Orders deprived the Claimant of the use, enjoyment and/or value of all other covered investments that it made in Trinidad and Tobago for the exclusive purpose of carrying out its obligations under EPC Contracts. These include:

- (a) Design and engineering work (whether complete or incomplete) for the smelter;
- (b) Design and engineering work (whether complete or incomplete) for upstream and downstream sections of the Project;

¹⁰³¹ **CL-0081**, Trinidad and Tobago - United States of America Investment Treaty, signed 26 September 1994, entered into force 26 December 1996, Art. III(1), p. 21.

¹⁰³² **CL-0084**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012, para. 397.

- (c) Equipment and materials purchased and/or delivered;
- (d) Other related works whether complete or incomplete;
- (e) Payments due for piling and dynamic compaction;
- (f) Training;
- (g) Testing;
- (h) Management costs;
- (i) Downtime costs;
- (j) Site maintenance;
- (k) Demobilisation;
- (l) Personnel dispatch costs; and
- (m) Cost of breaching employment contracts.

591. These will be further explained below in the Valuation section.

592. A more detailed breakdown of the investments that were made in Trinidad and Tobago is provided in the fact sections above. These assets are also discussed in detail in the Damages section below.

(3) Lasting interference

593. As to the element of lasting interference, the Expropriation Orders:

- (a) decisively ended the Claimant's construction venture in Trinidad and Tobago on 23 January 2012, if not earlier. As the Permanent Secretary demanded in the Discontinue Order on 9 January 2012, the discontinuance must take place "*with immediate effect*";¹⁰³³ and

¹⁰³³ C-0308, Letter from MEEA to Alutrint dated 9 January 2012.

- (b) could not have been more unequivocal: "*cease all works and activities*"¹⁰³⁴ and "*formally demobilise completely all CMEC's assets*".¹⁰³⁵

594. The severe impacts of the Expropriation Orders were permanent. There can be no suggestion that they were temporary.

(4) Reasonable expectations

595. The Expropriation Orders violated numerous reasonable expectations held by the Claimant, including most fundamentally:

- (a) the EPC Contracts would be honoured and the Claimant would be able to carry out and complete construction on the smelter for several years – especially as the Claimant was satisfactorily performing its side of the bargain and had not been in breach of its contractual obligations;
- (b) the Claimant would be able to derive a reasonable commercial return on the construction project and the amounts it invested, including on design, engineering, materials, employment of personnel, and training; and
- (c) the State would not raise any defence of extinctive prescription or other substantive objection given the assurances that it made to the Claimant as to paying the outstanding amounts due on the contract.

(5) Expropriation of contractual rights

596. The claim for expropriation of the Claimant's contractual rights in the EPC Contract raise specific issues that are addressed below.

597. First, a longstanding principle of international law is that it protects the expropriation of contractual rights. As far back as 1903, Commissioner Bainbridge of the US-Venezuela Mixed Claims Commission stated:

¹⁰³⁴ C-0030, Letter from Alutrint to CMEC dated 19 January 2012.

¹⁰³⁵ C-0031, Letter from Alutrint to CMEC dated 23 January 2012.

*"The taking away or destruction of rights acquired, transmitted, and defined by a contract is as much a wrong, entitling the sufferer to redress, as the taking away or destruction of tangible property".*¹⁰³⁶

598. More recently, the tribunal in *Southern Pacific Properties v. Egypt* held:

*"there is considerable authority for the proposition that contract rights are entitled to the protection of international law and the taking of such rights involves an obligation to make compensation therefor. Moreover, it has long been recognized that contractual rights may be indirectly expropriated."*¹⁰³⁷

599. Second, the type of contractual rights that may be expropriated is broad. Illustrating this position is the tribunal's award in *Consortium R.F.C.C. v. Morocco*, which held that any right arising out of a contract that is an investment constitutes a right that may be the object of an expropriation.¹⁰³⁸ A closer look at the case law demonstrates that construction contracts may be expropriated.

600. In *Starrett Housing v. Iran*, the investor possessed contractual rights to develop a housing project. The Iran-United States Claims Tribunal held that in relation to these contractual rights the Government of Iran was responsible for expropriating *"the [investor's] physical property as well as the right to manage the Project and to complete the construction in accordance with the Basic Project Agreement and related agreements, and to deliver the apartments and to collect the proceeds of the sales as provided in the Apartment Purchase Agreements."*¹⁰³⁹ Similarly, in *Impregilo v. Pakistan*, the tribunal held that contracts for the construction of hydroelectric facilities could be the subject of an expropriation claim (the matter was settled prior to a merits

¹⁰³⁶ **CL-0105**, *Rudloff* case, Commission US-Venezuela, Opinion of Bainbridge, American Commissioner (interlocutory), 1 January 1903, 9 RIAA 244, p. 250.

¹⁰³⁷ **CL-0106**, *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992, paras. 164-165. See also, **CL-0107**, *Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company*, IUSCT (Iran-US Claims Tribunal) Case No. 39, Award No. 425-39-2, 29 June 1989, para. 76 ("[E]xpropriation by or attributable to a State of the property of an alien gives rise under international law to liability for compensation, and this is so whether expropriation is formal or de facto and whether the property is tangible, such as real estate or a factory, or intangible, such as the contract rights involved in the present Case").

¹⁰³⁸ **CL-0108**, *Consortium R.F.C.C. v. Kingdom of Morocco*, ICSID Case No. ARB/00/6, Award, 22 December 2003, para. 60.

¹⁰³⁹ **CL-0109**, *Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others*, IUSCT (Iran-US Claims Tribunal) Case No. 24, Interlocutory Award No. ITL 32-24-1, 19 December 1983, para. 74.

determination),¹⁰⁴⁰ and in *ADC v. Hungary*, the tribunal found that a concession contract for the design, construction and operation of the Budapest Airport had been expropriated.¹⁰⁴¹ It follows that the rights contained in the EPC Contracts – agreements concerning the engineering, procurement and construction related to an aluminium smelter and its upstream and downstream components – are rights that may be expropriated.

601. Third, an expropriation of contractual rights requires the impugned acts of the State to be made its capacity as a sovereign, for example by exercising its public powers rather than simply acting under a contract. As the *Impreglio v. Pakistan* tribunal stated:

"the fact that a breach may give rise to a contract claim does not mean that it cannot also – and separately – give rise to a treaty claim. Even if the two perfectly coincide, they remain analytically distinct, and necessarily require different enquiries.

*[...] In order that the alleged breach of contract may constitute a violation of the BIT, it must be the result of behaviour going beyond that which an ordinary contracting party could adopt. Only the State in the exercise of its sovereign authority ('puissance publique'), and not as a contracting party, may breach the obligations assumed under the BIT. In other words, the investment protection treaty only provides a remedy to the investor where the investor proves that the alleged damages were a consequence of the behaviour of the Host State acting in breach of the obligations it had assumed under the treaty."*¹⁰⁴²

602. A footnote in the passage quoted above referred to a publication by Judge Stephen Schwebel (former President of the International Court of Justice), in which he wrote:

"the breach of such a contract by a State in ordinary commercial intercourse is not, in the predominant view, a violation of international law, but the use of the sovereign authority of a State, contrary to the expectations of the parties, to abrogate or violate a contract with an alien, is a violation of international law [...] when the State employs its legislative or administrative or executive authority as only a State can employ governmental authority to undo the fundamental expectation on the basis of which parties characteristically

¹⁰⁴⁰ **CL-0110**, *Impregilo S.p.A. v. Islamic Republic of Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, para. 274.

¹⁰⁴¹ **CL-0075**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, paras. 423-445.

¹⁰⁴² **CL-0110**, *Impregilo S.p.A. v. Islamic Republic of Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, paras. 258 and 260 (footnote omitted).

contract – performance, not non-performance – then it engages its international responsibility."¹⁰⁴³

603. In *Siemens v. Argentina*, the tribunal determined that an Argentine decree terminating a contract was an expropriatory act because Argentina's measures were not simply based the contract but were an exercise of its public powers.¹⁰⁴⁴ Similarly, in the present case, Trinidad and Tobago's acts were undoubtedly related to its public authority and not an exercise of contractual rights for two key reasons:

- (a) The Cease Works Order was issued by Alutrint as a direct result of the Discontinue Order by the Permanent Secretary of the GORTT to the Acting Chief Executive of Alutrint – "*that the Alutrint Smelter Project [...] be discontinued with immediate effect*";¹⁰⁴⁵ and
- (b) The State's actions were not contractually driven by the EPC Contracts but were politically motivated, as is admitted by the current Prime Minister of Trinidad and Tobago who observed that the Project was "*politically extinguished*".¹⁰⁴⁶

604. The State's acts (including Alutrint's) in January 2012 to terminate the Project and therefore the underlying contracts were not derived from contractual rights but instead were an exercise of governmental authority based on political reasons. In effect this conduct destroyed the Claimant's investment activity,¹⁰⁴⁷ including its contractual rights and engages the State's treaty obligation not to expropriate under the BIT.

¹⁰⁴³ **CL-0110**, *Impregilo S.p.A. v. Islamic Republic of Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, para. 260; S. M. Schwebel "*Justice in International Law*" (Grotius / CUP), Chapter 26: "*On Whether the Breach by a State of a Contract with an Alien is a Breach of International Law*" cited in **CL-0110**, *Impregilo S.p.A. v. Islamic Republic of Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, footnote 118, para. 260.

¹⁰⁴⁴ **CL-0100**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, para. 271.

¹⁰⁴⁵ **C-0308**, Letter from MEEA to Alutrint dated 9 January 2012.

¹⁰⁴⁶ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

¹⁰⁴⁷ See for example, **CL-0066**, *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, para. 345 ("*[T]he termination of the [gas sale and purchase agreement] destroyed the Claimants' investment activity*").

605. Fourth, a tribunal may find that an expropriation of contractual rights has occurred notwithstanding that the contract in question has been subsequently terminated by the investor. In the second award in the *Vivendi v. Argentina* case, the tribunal held that a necessary consequence of Argentina's actions was to force one of the claimants to terminate the concession agreement in dispute. The tribunal held that

*"Claimants were radically deprived of the economic use and enjoyment of their investment, the benefits of which (ie the right to be paid for services provided) had been effectively neutralised and rendered useless. Under these circumstances, rescission of the Concession Agreement represented the only rational alternative for Claimants. By leaving Claimants with no other rational choice, we conclude that the Province thus expropriated Claimants' right of use and enjoyment of their investment under the Concession Agreement."*¹⁰⁴⁸

606. In the present case, as a direct consequence of the Expropriation Orders, the Claimant had no option but to give a Notice of Termination in March 2013. In the face of the State's Expropriation Orders, the Project could not proceed and had to be discontinued. With no reasonable prospect of a revival of the Project, termination was the only rational alternative for the Claimant. As a consequence, the Claimant's right to use and enjoy its investments under the EPC Contracts were effectively expropriated by the State.

607. If *arguendo* the State alleges that the Claimant caused or contributed to the ending of the Project by electing to terminate the EPC Contracts, the Claimant's response is simple: as made clear in Section E.8(f), the Claimant terminated those Contracts because it was wrongfully *forced* to do so by the State. The forced termination perpetrated by the State cannot absolve it from its obligations to pay compensation for the expropriation of the Claimant's investments. The applicable (and well established) international principle in this circumstance which disentitles the State to make any such argument is that the State cannot take advantage of its own wrong ("*nullus commodum capere potest de injuria sua propria*").¹⁰⁴⁹

¹⁰⁴⁸ **CL-0111**, *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, p. 237, para. 7.5.34.

¹⁰⁴⁹ **CL-0112**, B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, Grotius Publications/Cambridge University Press 2006, pp. 149-155.

608. The elements of "*substantial deprivation*" and "*lasting*" interference are both clearly satisfied in the case of the Expropriation Orders, coupled with the State's failure to pay any amounts due under the EPC Contracts. This is not a case where the value of the Claimant's investment was diminishing. The State's acts effectively destroyed the Claimant's investment. Accordingly, the State carried out (and is internationally responsible for) an indirect expropriation. The claim of indirect expropriation is buttressed by the Claimant's reasonable expectation that the Project was to last for several years was frustrated and, in relation to the claim for the expropriation of the EPC Contracts, the State's measures were sovereign (and not contractual) acts carried out by the State.
609. Fifth, the BIT's definition of an investment in Article 1 as including "*claims to money, or to any performance under contract having an economic value associated with an investment*" recognises that an investor's contractual rights, as a form of intangible property with an economic value,¹⁰⁵⁰ are qualified "*investments*" capable of expropriation by the host State.¹⁰⁵¹ The EPC Contracts are therefore protected under the BIT.

(ii) Expropriation Claim 2: Creeping expropriation of the EPC Contracts

610. In the alternative, the Claimant contends that its covered investments were indirectly expropriated through a series of measures that constitute a creeping expropriation.
611. The series of measures on which the Claimant relies in this alternative claim includes the following acts and omissions:
- (a) 24 May 2010 – on this day the UNC won the general election and in commenting on the victory, Jack Warner (Chair of UNC) stated that the construction of an aluminium smelter would not be permitted by the new government;

¹⁰⁵⁰ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 1.1(c).

¹⁰⁵¹ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6.

- (b) 8 September 2010 – in The Honourable Winston Dookeran, Minister of Finance, Budget Statement for 2011, he declared that "*there has been great uncertainty about both the Alutrint and the Rapid Rail projects. There has been much public criticism of these projects rising from legitimate concerns. In addition to the health and environmental risk, there is also serious concern as to Alutrint's viability and the optimal use of our gas. This project shall cease*".¹⁰⁵²
- (c) throughout 2011 – the Claimant actively sought to engage with Alutrint and the Government to obtain payment and clarification as to the Project's status but to no avail;
- (d) 9 January 2012 – the Discontinue Order was issued, i.e. the Permanent Secretary of the Ministry of Energy and Energy Affairs wrote to Alutrint formally notifying it that the Project "*be discontinued with immediate effect*".¹⁰⁵³
- (e) 19 January 2012 – the Cease Work Order was issued, in which Alutrint's CEO, Steve Mohammed to CMEC wrote to CMEC, stating that it had received a "*formal notification*" of the discontinuance on 9 January 2012, and that Alutrint "*has so been advised to discontinue the Alutrint Smelter Project with immediate effect*";¹⁰⁵⁴
- (f) 23 January 2012 – the Demobilisation Order was issued, i.e. Alutrint wrote to CMEC requiring it to "*formally demobilise completely all CMEC's assets (including equipment and materials) from the Project Site*";¹⁰⁵⁵
- (g) 28 November 2012 – CMEC submitted to Alutrint its preliminary statement of outstanding claims, which was not then (nor ever been) paid;

¹⁰⁵² C-0252, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 11.

¹⁰⁵³ The 19 January 2012 letter by Alutrint's CEO, Steve Mohammed to CMEC states that it received a "*formal notification*" of the discontinuance on 9 January 2012. It is assumed that this "*formal notification*" was the 9 January 2012 letter from the Permanent Secretary.

¹⁰⁵⁴ C-0030, Letter from Alutrint to CMEC dated 19 January 2012.

¹⁰⁵⁵ C-0031, Letter from Alutrint to CMEC dated 23 January 2012.

- (h) 22 March 2013 – CMEC was left with no choice but to submit its Notice of Termination (dated 10 March 2013) as a result of the State's unlawful termination of the Project; and
- (i) 17 May 2013 – CMEC submitted to Alutrint its finalised consolidated outstanding claims, which has not been paid.

612. In this series, the State's non-payment of the consolidated outstanding claims submitted by the Claimant to Alutrint on 17 May 2013 was the act by which the series culminated. While the 17 May 2013 letter did not stipulate a date by which payment should be made, a commercially reasonable expectation would have been that that payment should have been made at least within one month of the date of that letter, i.e., 18 June 2013. Non-payment on that date, taken together with the preceding acts and omissions in the series, was sufficient to constitute an internationally wrongful act, namely the breach of Article 6 of the BIT obligation not to expropriate covered investments of covered investors of the PRC.

613. Accordingly, the State's failure to pay by 18 June 2013 was the culminating act or omission that, taken together with its other actions and omissions, was sufficient to constitute a creeping expropriation. The reasons that support the occurrence of a creeping expropriation on this date are set out below.

- (a) The Expropriation Orders, which terminated the Project and demanded demobilisation and thereafter the non-payment, manifestly failed to meet the compound requirements for a lawful expropriation under Article 6 of the BIT because these acts and omissions:

- (i) could not qualify as a "*public purpose*" under the first limb of Article 6(1) given that these actions were the manifestation of a political policy as described above in Section E.8. Indeed as the Prime Minister has acknowledged, the prior government's conduct constituted "*political action*" and that prior government "*did other things except deal with*" CMEC's claim and instead "*danced around*" or "*ignored*" it;¹⁰⁵⁶

¹⁰⁵⁶ **C-0003**, R. Taitt, PM: *Chinese contractors make \$2.5 billion claim: 'Improper' cancellation of smelter plant project in 2010...*, Trinidad and Tobago Express, 13 October 2022.

- (ii) were discriminatory as they targeted CMEC as a Chinese entity, as the declarations of the then Minister of Energy clearly evidenced: "[I am] *not convinced by them since it was not Norwegian but Chinese who were involved in the construction of the smelter plant*"; "***I am not confident they [i.e. the Chinese] can build a plant in accordance with standards***" (emphasis added);¹⁰⁵⁷ and
- (iii) were not accompanied by *any* compensation whatsoever.

614. Further, the State's expropriatory acts and omissions did not accord CMEC the due process rights it was entitled to under Article III of the US BIT, which is applicable pursuant to the MFN clause in Article 4 of the BIT. Additionally, the applicable US BIT expropriation provision requires that the expropriation must accord with fair and equitable treatment standards and the obligation not to impair investments by unreasonable or discriminatory measures. The State's violation of these standards is set out in Section J.2 below.

615. As to the elements of substantial deprivation and lasting interference, for the acts and omissions of the series that culminated in June 2013, the Claimant repeats its submissions above. In addition, particularly as to the lasting interference, the Claimant notes that the State's interference has been continuing unabated since the creeping expropriation series began in May 2010.

616. While reasonable expectations are relevant (although not determinative) to the existence of an indirect expropriation, the Claimant reiterates that the conduct of the State violated its expectations related to its use and enjoyment of its EPC Contract rights as set out in the sections above.

J.2 Fair and Equitable Treatment

617. The State's treatment of the Claimant and its investments violated the FET standard prescribed in the BIT. This section first explains the substantive content of the BIT's FET provision and also identifies other applicable rules of international law. Thereafter, the section particularises the Claimant's FET claim.

¹⁰⁵⁷ C-0226, C. Asson, *COP knocks Govt on alutrint*, Trinidad and Tobago Newsday, 15 March 2010.

(a) Applicable BIT provision

618. The Claimant's FET claim is based on Article 3(2) of the BIT, which reads in relevant part:

*"Investments of the investors of each Contracting Party shall be accorded fair and equitable treatment [...] in the territory of the other Contracting Party."*¹⁰⁵⁸

619. The language of Article 3(2) of the BIT is broad and open-textured: it posits a generic *"fair and equitable treatment"* standard that has been drafted without definition, limitation or qualification.

620. In *MTD v. Chile*, the tribunal cast light on words *"fair"* and *"equitable"* in the context of an FET claim in the following passage:

*"In their ordinary meaning, the terms 'fair' and 'equitable' used in [the applicable investment protection treaty] mean 'just', 'even-handed', 'unbiased', 'legitimate'".*¹⁰⁵⁹

621. In applying this approach to the present case, the ordinary meaning of Article 3(2) therefore requires that just, even-handed, unbiased and legitimate treatment be accorded by Trinidad and Tobago to Chinese-owned investments in a manner that is consistent with the BIT's object and purpose. A key object and purpose of the BIT is informed by its Preamble, which highlights the creation of favourable conditions for investment in Trinidad and Tobago by Chinese investors.

622. In taking the context of the FET provision into account, it is material that Article 3(2) is part of a wider provision that requires (in Article 3(1)) the State to *"encourage and create favourable conditions for investors of the other Contracting Party to invest"*¹⁰⁶⁰ in the territory of Trinidad and Tobago. This context signals that the BIT's FET standard requires stable, reliable and supportive behaviour on the part of the State – it covers

¹⁰⁵⁸ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 3(2).

¹⁰⁵⁹ **CL-0113**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, para. 113, citing the *Concise Oxford Dictionary of Current English*.

¹⁰⁶⁰ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 3(1).

much more than a prohibition on treatment that is *not* fair or equitable. This reading is consistent with the view expressed by the tribunal in *MTD v. Chile*:

*"fair and equitable treatment should be understood to be treatment in an even-handed and just manner, conducive to fostering the promotion of foreign investment. Its terms [in the applicable treaty] are framed as a pro-active statement – 'to promote', 'to create', to 'stimulate' – rather than prescriptions for a passive behaviour of the State or avoidance of prejudicial conduct to the investors".*¹⁰⁶¹

623. Hundreds of trade and investment treaties contain generic FET clauses similar to Article 3(2) of the BIT. International tribunals interpreting and applying generic FET clauses have consistently held that such provisions impose a wide range of disciplines on the host State (in this case, Trinidad and Tobago), including to:

- (a) treat investors and investments in a way that is just and fair;¹⁰⁶²
- (b) refrain from treating investors and investments in a way that is arbitrary or discriminatory;¹⁰⁶³
- (c) treat investors and investments in a consistent manner;¹⁰⁶⁴
- (d) ensure that any measures taken against foreign investors are proportionate;¹⁰⁶⁵
- (e) avoid radical alteration of the legal and business framework under which the investment was made;¹⁰⁶⁶

¹⁰⁶¹ **CL-0113**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, para. 113.

¹⁰⁶² See for example, **CL-0114**, *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award, 17 May 2013, para. 196.

¹⁰⁶³ See for example, **CL-0036**, *Eureko B.V v. Republic of Poland*, UNCITRAL, Partial Award, 19 August 2005, paras. 233-234. See also, **CL-0115**, *Joseph C. Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, para. 260.

¹⁰⁶⁴ See for example, **CL-0116**, *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN 3481, Award, 3 February 2006, para. 158.

¹⁰⁶⁵ See for example, **CL-0113**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, para. 109.

¹⁰⁶⁶ See for example, **CL-0117**, *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2017, paras. 382-387.

- (f) be transparent in its dealings with investors and investments;¹⁰⁶⁷ and
- (g) refrain from acting in a manner that frustrates the legitimate expectations of an investor.¹⁰⁶⁸

(b) Applicable rules of international law

624. As noted, the choice of law clause in the BIT (Article 10(4)) mandates the Tribunal to decide in accordance with applicable rules of international law, at least to the extent they do not conflict with the *lex specialis* provisions of the BIT. The rules of international law described in this section may therefore be applied as part of the *lex generalis* that may supplement (but not contradict) the *lex specialis* where necessary.

(i) Good faith

625. The long-standing status of good faith as a bedrock rule of international law is uncontroversial. The primacy of good faith in international law was highlighted by the International Court of Justice in the *Nuclear Tests Case*:

*"One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declarations."*¹⁰⁶⁹

626. This emphatic statement by the peak international law judicial body supports the view that the rule of good faith is the foundation of FET and, as such, good faith and its allied principles and doctrines may be applied in the context of an FET claim.

¹⁰⁶⁷ See for example, **CL-0085**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 88.

¹⁰⁶⁸ See for example, **CL-0118**, *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award, 5 January 2024, para. 1529.

¹⁰⁶⁹ **CL-0119**, *Nuclear Tests (Australia v France)*, Judgment, 20 December 1974, I.C.J. Reports 1974, p. 253, para. 46.

(ii) Reparations

627. Article 3(2) of the BIT does not prescribe a standard of compensation payable to an investor for an FET violation by the State. This silence engages the *lex generalis* and gives the Tribunal discretion in fashioning remedies,¹⁰⁷⁰ including compensation for consequential losses.¹⁰⁷¹ The remedies for an FET violation are of course shaped by the State's *lex generalis* obligation to make "full reparations" for any internationally wrongful act it commits, including paying compensation for the economic harm that the investor has sustained.¹⁰⁷² The international law rules for reparations are those articulated in *Factory at Chorzów*¹⁰⁷³ and the ILC Articles, discussed in the Damages section below.

(c) Particulars of claim

628. The FET standard comprises a wide range of (often interrelated) investor-protective disciplines, which have been outlined above. If one or more of these disciplines is not satisfied, the standard will be violated.

629. The content of the FET standard, as established in *Tecmed v. Mexico*, is particularly instructive:

"[Fair and equitable treatment] requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations. [...] The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its

¹⁰⁷⁰ **CL-0120**, *Azurix Corp. v. The Argentine Republic (I)*, ICSID Case No. ARB/01/12, Award, 14 July 2006, paras. 421-422.

¹⁰⁷¹ **CL-0121**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 October 2012, paras. 792-794 and 797.

¹⁰⁷² **CL-0094**, *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (Merits), 13 November 2000, para. 312.

¹⁰⁷³ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928.

*commitments as well as to plan and launch its commercial and business activities. The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments, and not to deprive the investor of its investment without required compensation".*¹⁰⁷⁴

630. An additional element of FET not explicitly referred to in the *Tecmed* passage quoted above is a State's obligation to provide due process. A further relevant aspect of the FET standard is that the host government's conduct need not be egregious or shocking to rise to the level of a FET violation – particularly when the claim is brought under generic and unqualified FET provision as is the case here.¹⁰⁷⁵ Indeed, investment tribunals have noted that it is possible for the State to violate FET "*without necessarily acting in bad faith*".¹⁰⁷⁶
631. In summary, to comply with the obligation to accord FET under the BIT, the State is required, among other things, to uphold and not frustrate the Claimant's legitimate expectations, to act consistently, transparently and in good faith, and to provide due process in relation to the Claimant's investments. As established in the sections to follow, the State unquestionably breached each of these disciplines. Accordingly, it failed to accord FET to CMEC's investments as it was obliged to do under Article 3 of the BIT. While many of the FET disciplines mentioned above may overlap with others, each element is discussed individually below.

(i) Legitimate expectations

(1) Case law

632. The purpose of legitimate expectations in the context of FET protection "*is to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment, as long as these*

¹⁰⁷⁴ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 154.

¹⁰⁷⁵ **CL-0122**, *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, para. 508.

¹⁰⁷⁶ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, para. 153.

*expectations are reasonable and legitimate and have been relied upon by the investor to make the investment".*¹⁰⁷⁷

633. Upholding the legitimate expectations of the investor and ensuring a stable legal and business environment have been considered "*central*" to the interpretation of FET following the *Tecmed* case.¹⁰⁷⁸ This principle is rooted in the notion that an investor's decisions — pertaining to the nature, timing, manner and operation of their investment — are heavily influenced by their perception of the host government's regulatory framework and anticipated conduct in relation to their investment.¹⁰⁷⁹

634. As the tribunal stated in *Suez v. Argentine Republic*:

*"When an investor undertakes an investment, a host government through its laws, regulations, declared policies, and statements creates in the investor certain expectations about the nature of the treatment that it may anticipate from the host State. The resulting reasonable and legitimate expectations are important factors that influence initial investment decisions and afterwards the manner in which the investment is to be managed. [...] An investor's expectations, created by law of a host country, are in effect calculations about the future".*¹⁰⁸⁰

635. Within this context, the existence of an FET obligation necessitates that a host government honour the legitimate expectations of an investor regarding its investments within that country. These expectations are based on both explicit and implicit representations made by the host government, upon which the investor relies when committing capital and assuming financial risk. Such risks may not have been accepted by the investor without the foundational belief that, for instance, the host government

¹⁰⁷⁷ **CL-0046**, *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, para. 602.

¹⁰⁷⁸ **CL-0123**, *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, paras. 346 and 348; **CL-0124**, *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, para. 274.

¹⁰⁷⁹ **CL-0125**, *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, UNCITRAL, Partial Award, 17 March 2006, para. 301 ("*[T]he 'fair and equitable treatment' standard [...] should therefore be understood to be treatment which, if not proactively stimulating the inflow of foreign investment capital, does at least not deter foreign capital by providing disincentives to foreign investors. An investor's decision to make an investment is based on an assessment of the state of the law and the totality of the business environment at the time of the investment as well as on the investor's expectation that the conduct of the host State subsequent to the investment will be fair and equitable*").

¹⁰⁸⁰ **CL-0126**, *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAgua Servicios Integrales del Agua S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/17, Decision on Liability, 30 July 2010, para 203.

will refrain from illegal expropriation or the outright destruction of the investment. Should the host government then act contrary to its prior representations, causing detriment to the investment, it would be in breach of its FET obligation.¹⁰⁸¹

636. In *Gold Reserve v. Venezuela*, the claimant argued that after it was granted certain mining permits, Venezuela reinforced the belief and expectation that claimant's mining activities were compliant with applicable laws by consistently issuing compliance certificates to claimant.¹⁰⁸² The tribunal held that such expectations were reinforced by the absence of any warnings or formal notice from the State to the contrary.¹⁰⁸³ Yet, following a political policy change, claimant's permits were progressively hindered and ultimately cancelled.¹⁰⁸⁴ The tribunal found the State's "*breach of legitimate expectations as a FET component [to be] of particular significance*" and held that Venezuela had violated its FET obligation.¹⁰⁸⁵

637. The elements of a claimable legitimate expectation may be outlined as follows:

- (a) First, the expectation should be generated by "*clear and explicit (or implicit) representations [...] by or attributable to the state*".¹⁰⁸⁶ In the absence of an express commitment, it is enough if a State "*acted in a manner that would reasonably be understood to create such an appearance*".¹⁰⁸⁷
- (b) Second, these representations (explicit or by conduct) must be communicated by the relevant State *to the investor*.¹⁰⁸⁸

¹⁰⁸¹ **CL-0126**, *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAgua Servicios Integrales del Agua S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/17, Decision on Liability, 30 July 2010, para. 207.

¹⁰⁸² **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 578.

¹⁰⁸³ **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 579.

¹⁰⁸⁴ **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, paras. 580-582.

¹⁰⁸⁵ **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, paras. 606 and 615.

¹⁰⁸⁶ **CL-0128**, *Antaris Solar GmbH and Dr. Michael Göde v. The Czech Republic*, PCA Case No. 2014-01, Award, 2 May 2018, para. 360(3).

¹⁰⁸⁷ **CL-0122**, *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, para. 669.

¹⁰⁸⁸ **CL-0060**, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, para. 217.

- (c) Third, the investor must have relied on the expectation, and this reliance must have been reasonable.¹⁰⁸⁹

(2) Fact assessment

638. Pre-termination assurances and representations: The basis for the Claimant's legitimate expectations prior to the termination of the Project included the following:

- (a) Historically there had been "*bi-partisan support for aluminium and the diversification of [Trinidad and Tobago]'s natural gas-led industrialisation*".¹⁰⁹⁰ Given this background, a much more stable government approach to the Project was expected, irrespective of the political party in power.
- (b) The memorandum of understanding dated 23 March 2005, together with the 2005 and 2008 EPC Contracts,¹⁰⁹¹ gave a legitimate expectation to CMEC that it would be permitted to carry out works and to complete the construction of an aluminium smelter at La Brea. And, for example, if CMEC terminated the 2008 Contract, as it did, Alutrint would pay "*the amount of any loss or profit or other loss or damage sustained by [CMEC] as a result of this termination*".¹⁰⁹² These representations were clear and specific to CMEC. It was therefore legitimate for CMEC to rely on this legal framework.
- (c) CMEC legitimately expected that the State would not terminate the Project prior to completion. Reflective of this expectation is the view expressed in the MOF letter to Sinasure dated 15 September 2009 (which was forwarded to CMEC): "*we are committed in our resolve to complete the project, which is one of the main pillars of the industrialization strategies of the Government of the Republic of Trinidad and Tobago*".¹⁰⁹³ Indeed, to support the smelter, a power plant (TGU) was under construction to supply electricity and port facilities were also under construction to enable transport of raw materials to and output products

¹⁰⁸⁹ **CL-0122**, *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, para. 668.

¹⁰⁹⁰ **C-0198**, A. Wilson, *Are T&T's environmentalists anti-people?*, Trinidad and Tobago Guardian, 22 July 2009, p. 2.

¹⁰⁹¹ **C-0011**, 2005 EPC Contract dated 20 December 2005; **C-0015**, 2008 EPC Contract dated 30 October 2008.

¹⁰⁹² **C-0015**, 2008 EPC Contract dated 30 October 2008, General Conditions, Sub-Clause 16.4(c).

¹⁰⁹³ **C-0206**, Letter from MOF to Sinasure dated 15 September 2009, p. 2.

from the smelter.¹⁰⁹⁴ The Alutrint smelter was the "*focus and justification*" of these related industrial projects, which gave CMEC extra assurance that the State would keep the Project alive and bring it to fruition.¹⁰⁹⁵

- (d) An example of an Alutrint-generated expectation, namely, that the Project would run through to completion and that CMEC would have a role even beyond the start-up of the smelter, arose through Alutrint's requests to CMEC to develop a workforce development plan, training proposal and other deliverables that would be implemented by CMEC after the smelter was constructed. CMEC invested considerable time on these tasks based on the expectation that it would enter into a separate smelter-related training contract (for training to be provided after construction and start-up of the smelter), but this did not materialise because of the premature termination of the Project.
- (e) Through specific assurances made by the State, CMEC had a legitimate expectation that the State would do everything in its power to progress the Project, including appealing the 2009 High Court Decision. In the MOF letter to Sinasure dated 15 September 2009, the MOF conveyed a strong commitment to ensuring the appeal would go ahead:

"[...] Alutrint Limited, and the Attorney General – on behalf of the Government of the Republic of Trinidad and Tobago – have joined the appeal as interested parties. The Government and Alutrint are therefore actively pursuing this action.

The Court of Appeal has agreed to hear the appeal in a relatively short time, and has set aside the approximate period of September 21-25, 2009 for the hearing.

We are confident that the matter will be resolved in favour of the continuation of the aluminium smelter project. We will await the sentiment of the Appeal Court (expected hopefully a few weeks after the hearing) to determine the best way forward, which may be via the

¹⁰⁹⁴ **C-0189**, R. Sookraj, *Alutrint: Smelter works at a standstill*, Trinidad and Tobago Guardian, 1 July 2009 (quoting NEC's statement on works underway at the Union Industrial Estate). See also **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 4 (summarising the status of the supporting infrastructure and projects as of July 2010).

¹⁰⁹⁵ **C-0171**, Letter from Alutrint to CMEC dated 27 February 2009, p. 1.

judicial system, or through an administrative recovery process with the EMA."¹⁰⁹⁶

639. The above instances demonstrate that the State and Alutrint openly conducted themselves in a manner that manifested to CMEC the State's high confidence in and long-term backing of the Project (including, naturally, its completion). These assurances and representations therefore created expectations to that effect. The Claimant, relying on these expectations, made and continued its investment in Trinidad and Tobago in good faith.
640. Over time, and given the political change resulting from the UNC's general election victory in May 2010, it became clear that these expectations would not be satisfied. The complete reversal of the State's prior position in relation to the Project from the change of government onward is unambiguous. Demonstrative of this radical change in position is the 28 May 2010 email to CMEC by the UNC designated Chairperson of Alutrint: the UNC intended "*to shut down the Alutrint project*" and that the expenditures by Alutrint would be reduced and/or terminated "*until the Government determines the future of the company*".¹⁰⁹⁷ If any expectations could possibly survive, they were decisively extinguished by the January 2012 Expropriation Orders. The State's abrupt and complete reversal of its backing for the Project showed no fidelity to the BIT's stated purpose of creating "*favourable conditions for investment by investors*" which is "*conducive to stimulating business initiatives of investors*".¹⁰⁹⁸
641. Post-termination assurances and representations: In the aftermath of the termination of the EPC Contracts, another set of assurances and representations were made by the State in relation to the payment to CMEC of outstanding amounts. These were also relied on by CMEC, which included an agreement by the State in 2017 that these claim amounts would be settled through a mix of cash and entry into a new potential project in Trinidad and Tobago.¹⁰⁹⁹ Relying on and trusting these assurances and representations, CMEC frequently sought collaborative discussions with the State to obtain payment through

¹⁰⁹⁶ **C-0206**, Letter from MOF to Sinosure dated 15 September 2009, p. 2.

¹⁰⁹⁷ **C-0027**, Letter from Alutrint to CMEC dated 28 October 2010.

¹⁰⁹⁸ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Recitals, paras. 2 and 3.

¹⁰⁹⁹ **C-0440**, Letter from CMEC to Minister S. Young dated 5 June 2017.

amicable means from 2014 until 2022. In 2022, the State's conduct again demonstrated that it was not acting in good faith and CMEC was left with no option but abandon its amicable approaches and to commence the present arbitration.

642. Assurances and representations after the EPC Contract termination in relation to payment of outstanding amounts under the EPC Contracts include:

- (a) in August and September 2014 – the State offered to pay in good faith a preliminary amount of US\$15 million from the account balance of Alutrint, with the final claims amount and payment schedule to be confirmed by the Ministerial Committee after negotiation between both parties;¹¹⁰⁰
- (b) in November 2014 – Prime Minister Rowley wrote to CMEC stating "*I look forward to holding discussions [on CMEC's claims] with you in the not too distant future*";¹¹⁰¹
- (c) in January 2017 – at a meeting on 20 January 2017 between CMEC and the State's negotiation committee, the parties reached a consensus to resolve CMEC's claims through friendly negotiation and cooperation in the near future;¹¹⁰²
- (d) in March 2017 – the State informed CMEC that its negotiation committee would be hiring a lawyer to review documents relating to CMEC's claims;¹¹⁰³
- (e) in May 2017 – in a meeting between Energy Minister Mr Stuart Young and CMEC in Beijing on 13 May 2017, an agreement was reached that CMEC's claims would be settled through a payment of cash as well as a new potential project co-operation;¹¹⁰⁴

¹¹⁰⁰ **C-0046**, Letter from J. Li to Prime Minister Rowley dated 3 November 2015, p. 4; **C-0045**, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), p. 27.

¹¹⁰¹ **C-0051**, Letter from Prime Minister K. Rowley to CMEC dated 20 November 2015.

¹¹⁰² **C-0432**, Letter from CMEC to MOF dated 9 February 2017.

¹¹⁰³ **C-0054**, Letter from MOF to CMEC dated 15 March 2017.

¹¹⁰⁴ **C-0440**, Letter from CMEC to Minister S. Young dated 5 June 2017.

- (f) in April 2018 – the State still stated it was hiring a lawyer to review CMEC's claim;¹¹⁰⁵
 - (g) in January 2020 – Finance Minister Mr Colm Imbert agreed to meet with CMEC on 11 February 2020;¹¹⁰⁶ and
 - (h) in July 2021 – because scheduled meeting on 11 February 2020 did not go ahead (despite numerous reminders from CMEC (see below)), Finance Minister Mr Colm Imbert agreed to set up a virtual meeting in relation to CMEC's claims.¹¹⁰⁷
643. All of the above assurances or representations – which created a legitimate expectation that the outstanding amounts due to CMEC under the EPC Contracts would be settled – were frustrated by the State or its representatives.
644. The failure of Mr Colm Imbert to meet with CMEC from January 2020 onward merits particular attention. The meeting with him scheduled for 11 February 2020 did not go ahead due to Covid-19 travel restrictions. In June 2020, CMEC suggested to Mr Imbert the possibility of a virtual meeting in July 2020, to which Mr Imbert responded "*Not at this time. Will arrange soon however.*"¹¹⁰⁸ CMEC sent reminders to Mr Imbert to reschedule the postponed meeting on 28 July 2020, 20 August 2020, 9 November 2020, and 29 June 2021.¹¹⁰⁹ Despite these reminders no meeting took place due to Mr Imbert's lack of responsiveness. Mr Imbert finally responded to CMEC on 1 July 2021 and agreed to set up a virtual meeting.¹¹¹⁰ This was a full year after CMEC initially sought a virtual meeting. On 14 July 2021, CMEC responded to Mr Imbert to progress with setting up the virtual meeting.¹¹¹¹ Mr Imbert again became unresponsive, which caused CMEC to send follow-up reminder email on 6 August 2021.¹¹¹² More than a year later,

¹¹⁰⁵ **C-0056**, Emails between L. Zhang and M. Khan dated 9 April 2018.

¹¹⁰⁶ **C-0472**, Email from S. Spence to W. Francis dated 15 January 2020.

¹¹⁰⁷ **C-0487**, Email from Finance Minister C. Imbert to L. Zhang dated 1 July 2021.

¹¹⁰⁸ **C-0479**, Email from C. Imbert to L. Zhang dated 29 June 2020.

¹¹⁰⁹ **C-0480**, Letter from CMEC to Finance Minister C. Imbert dated 28 July 2020; **C-0482**, Letter from CMEC to Finance Minister C. Imbert dated 20 August 2020; **C-0484**, Letter from CMEC to Finance Minister C. Imbert dated 9 November 2020; **C-0486**, Letter from CMEC to Finance Minister C. Imbert dated 29 June 2021.

¹¹¹⁰ **C-0487**, Letter from CMEC to Finance Minister C. Imbert dated 1 July 2021.

¹¹¹¹ **C-0488**, Letter from CMEC to Finance Minister C. Imbert dated 14 July 2021.

¹¹¹² **C-0058**, Letter from CMEC to Finance Minister C. Imbert (with attachment) dated 6 August 2021.

no response had been received by Mr Imbert. By now, the good faith trust and confidence that CMEC had in the State's assurances and representations of meetings to resolve the payment claims amicably had essentially evaporated. CMEC saw no other option but to write to Mr Imbert to express its regret as to the lack of progress and to inform him that a notification of a claim under the BIT would shortly be issued by CMEC's lawyers.¹¹¹³

645. Regarding the State's 2014 offer to pay US \$15 million, CMEC accepted the proposal for phased payment, but the State never paid any part of the US \$15 million that it had offered to pay.
646. The long-term and continuous failures to act on its assurances and representations relating to the payment of outstanding amounts under the EPC Contracts is in effect a systemic strategy of delay that has enabled the State to avoid payment of the amounts due to CMEC under the EPC Contracts. Using the words of Prime Minister Rowley to sum up this limb of the Claimant's FET claim, when CMEC requested payment for the work carried out under the EPC Contracts, the State "*did other things except deal with it*", and simply "*danced around it*", or "*ignored*" CMEC's claims.¹¹¹⁴ There can be no doubt that in this regrettable context, the State has frustrated the legitimate expectations of CMEC.

(ii) Consistency, transparency and due process

(1) Case law

647. Consistency: Consistency in the legal and regulatory conduct of a State is an important discipline of FET. This concept is also linked to stability and predictability and the reduction of political risk.¹¹¹⁵ As the Tribunal in *Total v. Argentina* held:

¹¹¹³ **C-0490**, Letter from CMEC to Finance Minister C. Imbert (with attachment) dated 25 August 2022.

¹¹¹⁴ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

¹¹¹⁵ **CL-0080**, R. Dolzer, U. Kriebaum and C. Schreuer, "Standards of Protection", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), pp. 205-208.

*"stability, predictability and consistency of legislation and regulation are important for investors in order to plan their investments, especially if their business plans extend over a number of years. Competent authorities of States entering into BITs in order to promote foreign investment in their economy should be aware of the importance for the investors that a legal environment favourable to the carrying out of their business activities be maintained."*¹¹¹⁶

648. Transparency: States are obliged to adhere to the principle of transparency, which is also an important element in determining whether a State has violated the FET standard.¹¹¹⁷ A State's transparency obligation has been interpreted as requiring an absence of any administrative ambiguity or opacity, such that the legal and regulatory framework for the investor's operations is readily apparent.¹¹¹⁸ As the *Tecmed* tribunal noted, "[t]he foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor".¹¹¹⁹
649. An investor whose investment is covered by an FET obligation expects to know "*all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practice or directives*".¹¹²⁰ Tribunals have also held that it is the responsibility of States to notify any measures specifically targeted at the investor.¹¹²¹ A State will breach this obligation when it takes measures that keep an investor "*in contractual limbo*" without clarifying reasons underlying those measures¹¹²² or contradicts prior assurances.¹¹²³

¹¹¹⁶ **CL-0129**, *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010, para. 114.

¹¹¹⁷ **CL-0118**, *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award, 5 January 2024, paras. 1725-1726 and 1734.

¹¹¹⁸ **CL-0080**, R. Dolzer, U. Kriebaum and C. Schreuer, "Standards of Protection", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), pp. 213-214; **CL-0085**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 76.

¹¹¹⁹ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, para. 154.

¹¹²⁰ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, para. 154.

¹¹²¹ **CL-0130**, *Olin Holdings Limited v. State of Libya*, ICC Case No. 20355/MCP, Final Award, 25 May 2018, paras. 322-325.

¹¹²² **CL-0131**, *Windstream Energy LLC v. The Government of Canada (I)*, PCA Case No. 2013-22, Award, 27 September 2016, paras. 378-380.

¹¹²³ **CL-0072**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 597; **CL-0085**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paras. 85-101.

650. Due process: FET protects investors against State conduct that involves a lack of due process.¹¹²⁴ In *Metalclad v. Mexico*, a Mexican municipality refused to grant a construction permit. The Tribunal found the FET guarantee had been violated given the lack of procedural propriety. In particular, the tribunal held that "*the permit was denied at a meeting of the Municipal Town Council of which Metalclad received no notice, to which it received no invitation, and at which it was given no opportunity to appear.*"¹¹²⁵
651. Similarly, in *Tecmed v. Mexico*, a permit for the operation of a landfill had not been renewed. The tribunal found that the FET standard had been violated, among other things, because the relevant State agency did not report "*in clear and express terms*" its position to Tecmed as to the effect of certain infringements on the permit's renewal and that this prevented the Mexican company owned by Tecmed "*from being able to express its position as to such issue and to agree with [the agency] about the measures required to cure the defaults that [the agency] considered significant when it denied the renewal*".¹¹²⁶

(2) Fact assessment

652. Three critical instances where the State was not consistent or predictable, and where it did not offer the Claimant a transparent explanation or a true due process opportunity to present its views or objections, let alone an official notification or a warning of the impending acts or omissions, are:
- (a) the State's sudden withdrawal of its appeal against the 2009 High Court Decision – the withdrawal was decided at a Cabinet meeting to discontinue the entire Project¹¹²⁷ with no warning or opportunity to be heard given to CMEC;
 - (b) the State's abrupt and unilateral decision to terminate the Project – the decision was made shortly after the UNC's election in May 2010 and taken by the new

¹¹²⁴ **CL-0132**, *Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012, para. 219; **CL-0133**, *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, paras. 187 and 208.

¹¹²⁵ **CL-0085**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paras. 91 and 99-101.

¹¹²⁶ **CL-0088**, *Técnicas Medioambientales TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, para. 162.

¹¹²⁷ **C-0014**, 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 137.

government on non-transparent political grounds without consulting CMEC;
and

- (c) the State's refusal to pay CMEC the outstanding amounts under the EPC Contracts subsequent to the Project's termination – the State was not transparent as to why it was not paying, and the conduct it adopted under the purported intention of enabling a settlement of amounts to be paid was at best highly unpredictable.

653. These actions were in plain contradiction to the State's conduct leading up to these events – in which the State openly adopted the position that it would:

- (a) appeal the 2009 High Court decision;
- (b) not terminate the Project (particularly under the PNM government that established, encouraged and promoted the Project); and
- (c) pay CMEC the outstanding amounts due, or at least meet to settle the outstanding amount claimed.

654. Essentially, the State's acts were conducted in a manner that deprived CMEC of the ability to take appropriate action to protect its rights and investments.

655. Based on the above, the State's acts constituted violations of its FET obligation to conduct itself consistently and transparently, and to provide due process to the Claimant.

(iii) Absence of good faith

656. Tribunals have consistently recognised that the principle of good faith is integral to the FET standard.¹¹²⁸ The *Waste Management* tribunal stated that a basic obligation of the State is to "*act in good faith and form, not deliberately to set out to destroy or frustrate the investment by improper means*".¹¹²⁹ In *Frontier Petroleum v. Czech Republic*, the Tribunal held that "[r]eliance by a government on its internal structures to excuse non-

¹¹²⁸ **CL-0134**, *Alex Genin, Eastern Credit Limited, Inc. and A. S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Award, 25 June 2001, para. 367.

¹¹²⁹ **CL-0135**, *Waste Management v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, para. 138.

*compliance with contractual obligations would also be contrary to good faith".*¹¹³⁰ An FET violation may also be founded on the basis of an objective disregard of the rights enjoyed by the investor, i.e. subjective bad faith is not required on the part of a disputing State.¹¹³¹

657. The State violated the principles of good faith – first – by initially encouraging CMEC to carry out extensive work under the EPC Contracts, and – thereafter – by abruptly terminating the Project and effectively avoiding payment for outstanding amounts due to CMEC upon such termination. Also, as noted in the section on legitimate expectations above, the State's long-term and continuous failure to address CMEC's efforts to settle the outstanding amounts essentially constitutes a systemic strategy to avoid payment under the EPC Contracts, which is at the same time an abuse of the trust and confidence CMEC had placed in the State.
658. The above conduct of the State unequivocally manifests a lack of good faith that is in breach of Article 3(2) of the BIT.

J.3 Non-Impairment

659. The Claimant's unlawful impairment claim is based on Article 3(3) of the BIT, which provides:

*"Without prejudice to its laws and regulations, neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by the investors of the other Contracting Party"*¹¹³² (the **Non-Impairment Standard**).

660. The essential criteria in the Non-Impairment Standard – impairment and unreasonable or discriminatory measures – will be dealt individually below. A conclusion on the breach of Article 3(3) applying these criteria to the facts of the present case will then follow.

¹¹³⁰ **CL-0136**, *Frontier Petroleum Services Ltd. v. The Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, para. 300.

¹¹³¹ **CL-0123**, *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, October 2011, para. 357.

¹¹³² **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 3(3)

(1) Case law

661. Impairment: Non-impairment provisions are construed broadly. The term "*impair*" has been interpreted to mean "*hinder*" or "*harm*".¹¹³³ In *Saluka v. Czech Republic*, the tribunal considered that "*impairment*" related to "*any negative impact or effect*" caused by measures taken by the host State, which the tribunal held could be in the nature of both acts and omissions.¹¹³⁴

662. Unreasonable measures: The tribunal in *Micula v. Romania I* summed up the concept of unreasonableness in the following terms:

*"With respect to the meaning of the term 'reasonable', both Parties appear to agree that 'unreasonable' means lacking in justification or not grounded in reason (i.e. arbitrary), or not enacted in pursuit of legitimate objectives [...] for a state's conduct to be reasonable, it is not sufficient that it be related to a rational policy; it is also necessary that, in the implementation of that policy, the state's acts have been appropriately tailored to the pursuit of that rational policy with due regard for the consequences imposed upon investors."*¹¹³⁵

663. While agreeing with the *Micula* award, the tribunal in *Electrabel v. Hungary* added that ascertaining the reasonableness of a challenged measure also includes:

*"the requirement that the impact of the measure on the investor be proportional to the policy objective sought. [...] The test for proportionality has been developed from certain municipal administrative laws, and requires the measure to be suitable to achieve a legitimate policy objective, necessary for that objective, and not excessive considering the relative weight of each interest involved."*¹¹³⁶

664. These cases underscore the need to assess reasonableness based on the impact of a challenged measure on the investor, and particularly whether the measure is proportional and not excessive when the measure's objective is taken into account.

¹¹³³ **CL-0137**, *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award, 7 October 2020, para. 647.

¹¹³⁴ **CL-0125**, *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, UNCITRAL, Partial Award, 17 March 2006, paras. 458-459.

¹¹³⁵ **CL-0122**, *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, para. 525.

¹¹³⁶ **CL-0138**, *Electrabel S.A. v. The Republic of Hungary*, ICSID Case No. ARB/07/19, Award, 25 November 2015, para. 179.

665. Discriminatory measures: Discrimination was defined by the tribunal in *Plama v. Bulgaria* as corresponding "to the negative formulation of the principle of equality of treatment. It entails like persons being treated in a difference manner in similar circumstances without reasonable or justifiable grounds."¹¹³⁷ Professors Dolzer, Kriebaum and Schreuer add in their evaluation of discrimination that "[i]n the context of the treatment of foreign investment, the most frequent problem is discrimination based on nationality."¹¹³⁸

(2) Fact assessment

666. Based on the above criteria, the State has breached the Non-Impairment Standard contained in Article 3(3) of the BIT for the following reasons:

- (a) Impairment: The State has harmed the Claimant's investments by unilaterally terminating the Project and not compensating the Claimant for the losses incurred as a result of the termination. The Claimant's investments have therefore been impaired.
- (b) Unreasonableness: The State's termination of the Project was neither rational nor carried out in pursuit of legitimate objectives. It was a politically motivated decision that "chased out" CMEC from Trinidad and Tobago.¹¹³⁹ Further, the State's conduct post-termination – by not compensating CMEC for what was due under the EPC Contracts – was not proportional but abusive and excessive. The measures that impaired the Claimant's investments were therefore unreasonable.
- (c) Discrimination: As an alternative or in addition to (b) above, the State's decision-making that led to the termination of the Project, without any justifiable

¹¹³⁷ **CL-0139**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, para. 184.

¹¹³⁸ **CL-0080**, R. Dolzer, U. Kriebaum and C. Schreuer, "Standards of Protection", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), p. 249.

¹¹³⁹ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>).

ground whatsoever, was based (either totally or partially) on CMEC's nationality. Shockingly, the Energy Minister Carolyn Seepersad-Bachan, who was in charge of the Project's review,¹¹⁴⁰ saw no problem in holding the view that "*it was not Norwegian [sic] but Chinese who were involved in the construction of the smelter plant*"; "*I am not confident they [i.e. the Chinese] can build a plant in accordance with standards*".¹¹⁴¹ Without any justifiable grounds, the assessment of CMEC's capability to construct the smelter was based (in whole or in part) on nationality, which is undoubtedly a grave and extreme form of discrimination.

- (d) Ability to use, enjoy or dispose investments: The State's measures clearly impaired, if not prevented altogether, CMEC's ability to manage, maintain, use, enjoy or dispose its protected investments because the Project and the EPC Contracts were terminated.

667. Subject to double recovery, the Claimant is entitled to reparations for the State's violations of the Non-Impairment Standard it owed the Claimant and its covered investments under Article 3(3) of the BIT.

J.4 Umbrella clause

668. Article 13(2) of the BIT provides that:

*"Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards their investments."*¹¹⁴²

669. This type of provision is often referred to as an "*umbrella clause*" because it places commitments, obligations and undertakings made by the host State under an investment treaty's umbrella of protection. Numerous tribunals have held that an umbrella clause

¹¹⁴⁰ **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010; **C-0250**, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010 ("*I have done an analysis of all the projects associated with Alutrint so that the Cabinet can appreciate where we stand in terms of our commitment, contractual obligations and possibly expenditure*").

¹¹⁴¹ **C-0226**, C. Asson, *COP knocks Govt on Alutrint*, Trinidad and Tobago Newsday, 15 March 2010.

¹¹⁴² **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 13(2).

may elevate a State's contractual breach into a treaty breach.¹¹⁴³ Illustrative of this line of authority is the tribunal's approach in *SGS v. Paraguay*, which held that the umbrella clause in that case¹¹⁴⁴:

- (a) does not explicitly exclude commercial contracts from its scope (as is also the case with Article 13(2) of the BIT);¹¹⁴⁵
- (b) does not state that the observance of commitments "*may be breached only through actions that a commercial counterparty cannot take, through abuses of state power, or exertions of undue government influence*";¹¹⁴⁶
- (c) "*requires the 'observance' of commitments. Also as a matter of the ordinary meaning of the term, a failure to meet one's obligations under a contract is clearly a failure to 'observe' one's commitments*";¹¹⁴⁷ and
- (d) does not state or imply that "*that a government will only fail to observe its commitments if it abuses its sovereign authority*".¹¹⁴⁸

670. Other tribunals have refused to elevate contractual breaches into treaty breaches by way of an umbrella clause (often based on issues external to the text of a treaty, e.g. it would

¹¹⁴³ **CL-0140**, *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005, paras. 52-62; **CL-0141**, *Eureko B.V. v. Republic of Poland*, UNCITRAL, Partial Award, 19 August 2005, para. 260; **CL-0142**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, paras. 169-175; **CL-0100**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, paras. 204-206; **CL-0139**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, paras. 185-187; **CL-0143**, *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008, paras. 317-327; **CL-0144**, *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, paras. 109-112; **CL-0145**, *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016, para. 247.

¹¹⁴⁴ The umbrella clause in *SGS v. Paraguay* was contained in Article 11 of the Paraguay-Switzerland BIT, which provided that "[e]ither Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party". **CL-0146**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, para. 162.

¹¹⁴⁵ **CL-0146**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, para. 168.

¹¹⁴⁶ **CL-0146**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, para. 168.

¹¹⁴⁷ **CL-0147**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Award, 10 February 2012, para. 91.

¹¹⁴⁸ **CL-0147**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Award, 10 February 2012, para. 91.

promote a flood of lawsuits).¹¹⁴⁹ Nonetheless, the line of authority represented by *SGS v. Paraguay* is considerably more persuasive, particularly because it focuses on a BIT's text and therefore comports more with the approach prescribed under the Vienna Convention rules on treaty interpretation. As held by the ICJ in the *Case Concerning the Territorial Dispute between Libya and Chad*: "[i]nterpretation must be based above all upon the text of the treaty".¹¹⁵⁰

671. The Claimant's umbrella clause claim is based on the State's breach of Article 13(2) of the BIT due to its:

- (a) failure to ensure that CMEC was able to complete the construction works as agreed in the EPC Contracts;
- (b) failure to pay the amounts due to CMEC as agreed in the EPC Contracts; and
- (c) failure to observe the commitments made by government officials that the State would pay for the termination of the Contracts.

672. These are commitments the State made to CMEC which must be observed as the State has agreed under Article 13(2) of the BIT.

K. EXTINCTIVE PRESCRIPTION

673. In PO 1, the State has foreshadowed that it will argue that "*the Claimant's claims are barred on the grounds of extinctive prescription, acquiescence, estoppel, bad faith and/or abuse of process*" by reason of the following conduct, which is alleged to have caused prejudice to the State:

- (a) "*the Claimant's undue delay and failure to assert the claims in the Request for Arbitration for some 12 years until its Notification of a Claim and Request for Consultations and Negotiations by letter dated 26 August 2022*"; and
- (b) "*the Claimant's representation by words and/or conduct of its intention to commence arbitration under the dispute resolution procedure in the Contract*

¹¹⁴⁹ **CL-0148**, *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision on Jurisdiction, 6 August 2003 6 August 2003, para. 171.

¹¹⁵⁰ **CL-0028**, *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, 3 February 1994, para. 41.

Agreements, its instigation of such dispute resolution procedure and/or its lack of intention to claim against the Respondent under the BIT".

674. The above assertions suggest that the State considers the BIT claims asserted in this case are time-barred. While the BIT does not explicitly provide a period within which to commence a claim under the BIT, the Claimant acknowledges that a doctrine of extinctive prescription (also referred to as equitable prescription) exists under international law to preclude a tribunal from hearing stale claims. Relying on this doctrine, the State appears to be foreshadowing that it will argue that CMEC is precluded from bringing these claims under the BIT because CMEC has unduly delayed instituting those claims (despite the absence of an express time limit in the BIT).
675. Unlike statutory limitation periods, the doctrine of extinctive prescription does not prescribe a fixed number of years after which the institution of claims is automatically barred. The doctrine is a principle based on general notions of fairness and good faith rather than strict rules that apply after a set period of time elapses. Extinctive prescription therefore gives tribunals considerable discretion as to its application.
676. Extinctive prescription operates independently of domestic statutes or rules on time limitation. This means that a treaty arbitration determining international law claims is not subject to domestic time limitation statutes or rules. Simply put, the rationale behind this position is that treaty claims are based on international law, and extinctive prescription is the applicable international law for time-bar issues.
677. In *Bosca v. Lithuania*, Lithuania argued that the claim made by an Italian investor under the Italy-Lithuania BIT was time-barred under Lithuanian law. The arbitral tribunal rejected this argument, holding:

*"the Claimant's claim is not subject to the Lithuanian statute of limitations. In accordance with the [relevant BIT], the Tribunal applies international law, not Lithuanian domestic law, to these proceedings and there is no deadline prescribed by [the relevant BIT], [the UNCITRAL Arbitration Rules] or general principles of international law."*¹¹⁵¹

¹¹⁵¹ **CL-0114**, *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award, 17 May 2013, para. 120.

678. The Claimant notes that the first part of Article 10(4) of the BIT requires the Tribunal to determine the dispute in accordance with domestic law. However, that provision also provides that the Tribunal must apply the BIT's provisions as well as "*applicable principles of international law*".¹¹⁵² In the present case therefore the applicable international law principle – extinctive prescription – prevails over the domestic law, for example, Trinidad and Tobago laws relating to the limitation of actions.
679. Broad criteria determine whether the doctrine of extinctive prescription applies to preclude a tribunal from hearing a claim. Issues that may be relevant include: (a) failure of a claimant to persistently pursue its claims; and (b) the reasons for the delay. These two criteria will be discussed in turn.
680. Although extinctive prescription does not prescribe a specific period of time after which rights to commence a claim are extinguished, the doctrine may operate to preclude a claim where the claimant has failed to pursue the claim persistently.¹¹⁵³ Whether or not a claimant has persistently pursued a claim must be determined through the tribunal's assessment of relevant factual circumstances. In the present case, there are a multitude of CMEC submissions, reminders, updates, calls for negotiations, meetings and dispute resolution attempts since the termination of the Project, which are addressed in Section E.9 above. This compilation provides compelling evidence that CMEC was not idle in relation to its claims, but was instead highly active and persistent in pursuing them.
681. In *Kardassopoulos v. Georgia*, the claimants' BIT claim was not filed for 10 years after the dispute arose. Nevertheless, the tribunal in that case held that there was a persistent pursuit of the claim and no undue delay. As a result, it did not apply the extinctive prescription doctrine. A significant factor that influenced the tribunal's decision was the reason for the delay – the claimants' good faith belief that a fair resolution of the dispute could be achieved without having to commence arbitration:

"Having reviewed the totality of the evidence, it is abundantly clear to the Tribunal that the Claimants had good reason to suppose that a fair resolution of the dispute could be achieved in the manner proposed by the Georgian

¹¹⁵² **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 10(4).

¹¹⁵³ **CL-0079**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, para. 263.

Government if the Claimants did not have recourse to arbitration. The Claimants were (reasonably, in the circumstances) trying to avoid having to pursue arbitration of the dispute.

*The Tribunal accepts the [...] testimony offered on cross-examination by Mr. Fuchs, which indicates the good faith belief he held in 1995 – and continued to hold for years thereafter – that an amicable solution could be reached".*¹¹⁵⁴

682. In applying the reasoning adopted by the *Kardassopoulos* tribunal to the present case, even though CMEC's dispute with the State had its origins over 10 years ago:

- (a) there exists an overwhelming body of evidence, as set out in Section E.9 above, showing that the CMEC persistently pursued its claims since its investment was expropriated or otherwise wrongfully interfered with by the State; and
- (b) no undue delay exists on the part of the Claimant as the delay is reasonable and justified – CMEC had good reason to believe that a fair resolution of the dispute would be achieved through meetings and negotiations with the State.

683. If the State does invoke the extinctive prescription doctrine (even though the factual matrix of this case clearly demonstrates that it cannot do so), the Claimant reserves the right to make further pleadings and submit evidence on this issue.

L. DAMAGES

684. CMEC's claims for recovery of amounts due to it by the State, which include:

- (a) payment for works it has carried out under the EPC Contracts;
- (b) costs it has incurred, and any loss or damage it has sustained, prior to or as a result of the extended suspension and/or the eventual termination of the Project; and
- (c) any other payment from the State to which it is otherwise entitled (**Payment Claims**),

¹¹⁵⁴ **CL-0079**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, paras. 261-263.

are "*assets*" within the meaning of Article 1(1) of the BIT. Specifically, such claims represent "*claims to money*" and "*claims to performance*", with rights having financial value within the meaning of Article 1(1)(c) of the BIT.

685. The Claimant is entitled to full reparation for the State's breaches of its obligations under the BIT and international law. Monetary compensation (*i.e.*, damages) constitutes the full reparation that the Claimant seeks.

686. As noted in the introduction to this Memorial of Claim, the fair market value of the Claimant's investments can be readily assessed using conventional valuation methods applicable to construction contract works, because the Claimant's investments that have been expropriated or otherwise been the subject of BIT violations by the State are the Claimant's contractual rights under the EPC Contracts. These valuations place the Claimant's damages to be approximately USD **156,022,913**, as currently assessed.¹¹⁵⁵

687. In this section, the Claimant first identifies the legal rules and principles applicable to the quantification of damages in this case. The Claimant then discusses the valuation principles that should be applied in this case and applies these valuation principles to the facts at issue, drawing on the evidence of independent experts to quantify their claim.

L.1 Damages resulting from the State's Expropriation

688. The Claimant's claims for expropriation concern the State's breaches of Article 6 of the BIT (**Expropriation Claim**), as set out in above.

(a) Relevant provisions in Article 6(1) of the BIT

689. As explained above, the BIT sets out the circumstances in which a host State may *lawfully* expropriate a covered investment (*i.e.* if it satisfies all of the compound requirements under Article 6(1) of the BIT). However, Article 6 does not apply in a situation where (as here) the host State has expropriated a covered investment *unlawfully*.

¹¹⁵⁵ Inclusive of pre-Award interest, assuming that the Tribunal issues its award on 31 December 2027.

690. In circumstances of such an unlawful expropriation, the regime for reparations (including damages) is derived from the rules of customary international law, rather than the provisions of the BIT.¹¹⁵⁶ As Professor Sabahi has observed:

*"in case of lawful expropriation, compensation shall be calculated pursuant to the provisions of the applicable investment treaty, which require providing the aggrieved investor with fair market value of the investment immediately before expropriation; whereas in case of unlawful acts, the treaties do not apply, and the compensation should be calculated pursuant to the Chorzów Factory case dictum (representing customary international law on the subject) in order to put the aggrieved person in the economic position that it would have hypothetically possessed, but for the wrongful acts".*¹¹⁵⁷

691. While the Article 6 compensation regime does not control the quantification of damages for an unlawful expropriation, it sets an absolute minimum or floor for that quantification, to which any greater rights derived from rules of international law must be added. This is because the standard of compensation due for an unlawful expropriation cannot be lower than the standard applicable to a lawful expropriation – otherwise, the host State would have an incentive to breach the treaty. As the *ConocoPhillips v. Venezuela* tribunal noted:

*"[...] such interpretation would result in an incentive for host States to expropriate investments and to defer payment of compensation until an undetermined future date. Such an approach would defeat the purpose of 'protection of investment' that is the object of the BIT as stated in its Preamble".*¹¹⁵⁸

692. The *Himpurna* tribunal further emphasised that *"morality demands that disincentives to non-performance be maintained"*.¹¹⁵⁹

¹¹⁵⁶ **CL-0075**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, paras. 481-483.

¹¹⁵⁷ **CL-0149**, B. Sabahi, *Compensation and Restitution in Investor-State Arbitration: Principles and Practice*, Chapter 5 – Compensation (Oxford University Press, 2011), para. 5.5.

¹¹⁵⁸ **CL-0150**, *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Award, 8 March 2019, para. 228. See also, **CL-0151**, *Sedco, Inc. v. National Iranian Oil Company and The Islamic Republic of Iran*, IUSCT (Iran-US Claims Tribunal) Case Nos. 128 and 129, Interlocutory Award No ITL 59-129-3, 27 March 1986, Separate Opinion of Charles N. Brower, paras. 46-47; **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928, p. 47.

¹¹⁵⁹ **CL-0152**, *Himpurna California Energy Ltd. v. PT. (Persero) Perusahaan Listrik Negara*, UNCITRAL, Final Award, 4 May 1999, para. 329.

693. This minimum or floor for damage quantification relating to an unlawful expropriation is informed by the following terms in Article 6(2) of the BIT:¹¹⁶⁰

- (a) *"the market value of the expropriated investments immediately before the expropriation is taken or before the impending expropriation becomes public knowledge, whichever is the earlier";*
- (b) *this "value shall be determined in accordance with generally recognised principles of valuation"; and*
- (c) *"[t]he compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment."*

694. Therefore, the minimum quantification of compensation for a lawful expropriation under Article 6 of the BIT is the market value of the expropriated investment(s).

695. In the present case, the expropriated investments are (i) the outstanding amounts owed to CMEC and (ii) the rights to carry out the remaining to be performed obligations provided for under the EPC Contracts. The most accurate reflection of their market value is their intrinsic value as identified / bargained for under the EPC Contracts themselves. In other words, the agreed values in these Contracts constitute the real and precise identification of the market value of the expropriated assets.

696. The BIT drafter's reference to *"interest at a normal commercial rate"*¹¹⁶¹ leaves no doubt that they intended this part of compensation to be market reflective. The clause is silent on the form of interest payable, leaving open the question of whether simple or compound interest should apply. However, in explaining its decision to award compound interest, the *Crystallex* tribunal observed *"modern financial activity normally involves compound interest"*, noting the *"clear trend in recent [arbitral] decisions in favour of the award of compound interest"*.¹¹⁶² Thus, it would be both

¹¹⁶⁰ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6(2).

¹¹⁶¹ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6(2).

¹¹⁶² **CL-0072**, *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 935.

market reflective and consistent with arbitral practice to read Article 6 of the BIT as requiring that, even for a lawful expropriation, compound interest should be paid.

697. *A fortiori*, compound interest should be payable where the treaty has been breached. Even if (arguendo) Article 6 of the BIT could be read as requiring payment of simple interest for a lawful expropriation, that would say nothing about the form of interest payable for an unlawful expropriation. In the Claimant's submission, an interest premium for unlawful expropriation would be justified on principles of good faith.

(i) Applicable rules of international law

698. Under customary international law, compensation falls under the framework of reparations for internationally wrongful acts. The leading exposition of this framework is contained in the Permanent Court of International Justice (**PCIJ**) judgment in the 1928 Case Concerning *the Factory at Chorzów*.¹¹⁶³ The PCIJ held that "*reparation must, so far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear [...]*".¹¹⁶⁴

699. This standard was subsequently expressed in the ILC Articles.¹¹⁶⁵ In particular, ILC Article 31 provides:

- "1. *The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.*
2. *Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.*"¹¹⁶⁶

700. ILC Article 34 clarifies that the "*full reparation*" a State is obliged to make "*shall take the form of restitution, compensation and satisfaction, either singly or in*

¹¹⁶³ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928.

¹¹⁶⁴ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928, p. 47.

¹¹⁶⁵ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001.

¹¹⁶⁶ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 31.

combination".¹¹⁶⁷ While Article 35 confirms that restitution is the preferred remedy at international law,¹¹⁶⁸ where such restitution is impractical (as in the present case), ILC Article 36 provides that the State shall pay compensation as follows:

- "1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including **loss of profits** insofar as it is established"¹¹⁶⁹ (emphasis added).

701. In the present case, this loss of profit would include the profit built into the unpaid invoices that form part of CMEC's claim as well as the profit margin on the entire EPC Contracts (less the profit claimed on unpaid invoices).

702. The claim for profit constitutes a fundamental element of the principle enunciated in the *Factory at Chorzów* case: to reestablish the situation which would have existed if the State's unlawful act had not been committed. Reparation would not be full where an award does nothing more than reimburse the injured investor for its sunk costs and fails to recognise the profits and chances it has lost (nor would such an outcome be fair).¹¹⁷⁰ As the *Himpurna* tribunal observed: "[p]arties do not enter into contracts involving risk in order to be repaid their costs. To limit the recovery of the victim of a breach to its actual expenditures is to transform it into a lender, which is commercially intolerable when that party was at full risk for the amount of investments made on the strength of the contract."¹¹⁷¹ The Claimant did not make a long-term investment in Trinidad and Tobago in the hope that it would break even, nor on the understanding that it would assume the status of an unwilling creditor of the country. Therefore, for compensation

¹¹⁶⁷ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001.

¹¹⁶⁸ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 35 ("A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: (a) is not materially impossible; (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation").

¹¹⁶⁹ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, Art. 36.

¹¹⁷⁰ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928, pp. 47-49.

¹¹⁷¹ **CL-0152**, *Himpurna California Energy Ltd. v. PT. (Persero) Perusahaan Listrik Negara*, UNCITRAL, Final Award, 4 May 1999, para. 291.

must capture the Claimant's expected return on its investment, which includes the profits it would have gained had the State not breached its BIT obligations.

703. Finally, *nullus commodum capere de sua injuria propria* is an important principle for the assessment of damages. It means that no party is permitted to take advantage of its own wrong. In the determination of the FMV of an investment, this maxim operates to preclude the host State from discounting the value of the investment on account of any wrongful act committed by the host State. The *Burlington v. Ecuador* tribunal – involving the valuation of a going concern – observed that in the context of quantification of damages, a practical effect of this maxim is that "*the Tribunal must disregard the effects of value-depressing measures taken by the State related to the investment.*"¹¹⁷²
704. This principle is articulated in Article 6(2) of the BIT which requires that compensation for a lawful expropriation shall "*be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or before the impending expropriation becomes public knowledge, whichever is the earlier.*"¹¹⁷³ This bars the State from benefiting from any value reduction or distress flowing from its own unlawful actions. Given that the BIT expressly requires the application of this principle in circumstances of lawful expropriation, a fortiori this principle applies in the case of an unlawful expropriation, consistent with the "floor" principle described above.

L.2 Principles governing damages for the Additional Claims

705. In addition to the State's acts of expropriation, the State has breached other provisions of the BIT and international law. The Claimant's claims for such breaches comprise the following claims relating to the State's:
- (a) breaches of the FET standard (Article 3(2) of the BIT);

¹¹⁷² **CL-0153**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017, para. 362. See also, **CL-0121**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 October 2012, para. 564.

¹¹⁷³ **CL-0001**, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, Art. 6(2).

(b) unlawful impairment of the Claimant's investments (Article 3(3) of the BIT);
and

(c) breaches of the umbrella clause (Article 13(2) of the BIT) (together, the **Additional Claims**).

706. If the Tribunal finds that the State is liable to pay damages under any one or more of the Additional Claims, the rules expressed in the *Factory at Chorzów* case¹¹⁷⁴ and the Articles on State Responsibility apply to internationally wrongful acts¹¹⁷⁵ in general, such that in the case at hand they govern reparations for all the wrongs the Claimant alleges the State committed *vis-à-vis* their covered investments: violations of the FET, unlawful impairment and umbrella clause provisions. The universality of these rules is the subject of *jurisprudence constante* in investment arbitration.

707. As held by the tribunal in *Gold Reserve v. Venezuela*:

*"Turning now to the relevant principles of international law applicable to the award of damages for breach of FET [...] it is well accepted in international investment law that the principles espoused in the Chorzów Factory case, even if initially established in a State-to-State context, are the relevant principles of international law to apply when considering compensation for breach of a BIT. It is these well-established principles that represent customary international law, including for breaches of international obligations under BITs, that the Tribunal is bound to apply."*¹¹⁷⁶

708. The *Gold Reserve v. Venezuela* tribunal added:

*"[...] the serious nature of the [FET] breach in the present circumstances and the fact that the breach has resulted in the total deprivation of mining rights suggests that, under the principles of full reparation and wiping-out the consequences of the breach, a fair market value methodology is also appropriate in the present circumstances".*¹¹⁷⁷

¹¹⁷⁴ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928.

¹¹⁷⁵ **CL-0026**, International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001.

¹¹⁷⁶ **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 678.

¹¹⁷⁷ **CL-0127**, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 680.

709. In the case at hand, the State's BIT breaches that have given rise to the Additional Claims meet the criteria identified by the *Gold Reserve* tribunal because the State's international law breaches were based on abusive conduct, which led to the Claimants suffering a total deprivation of their investments or, alternatively, their opportunity to realise profits from those investments, as a result of:
- (a) the State's frustration of the Claimant's legitimate expectations, including the expectation that the State would not breach its contracts and fairly settle the dispute as it had assured the Claimant;
 - (b) the State's inconsistent, non-transparent and unfair treatment of the Claimants and lack of good faith, which demonstrated a serious disregard for the standards of treatment that the State had promised to afford foreign investors, including the Claimants, under the BIT. Those standards of treatment prohibited the State from depriving the Claimant of its investment;
 - (c) the State's unreasonable and discriminatory measures which impaired the negatively impacted the Claimant's management, maintenance, use, enjoyment and disposal of the Claimant's investments, to the extent of destroying the value of the Claimant's investment in the Project; and
 - (d) the State's breach of the umbrella clause by unlawfully terminating the EPC Contracts as well as failing to make payment to CMEC pursuant to the EPC Contracts and not observing other commitments made to the Claimant.
710. Although the Additional Claims implicate a range of State acts (and omissions), the State's act that is common to the Additional Claims is the termination of the EPC Contracts, which was the event that caused the majority of the damage sustained by the Claimants. Subject to double recovery, damages for these Additional Claims should be awarded to the Claimant based on the fair market value of the Claimant's rights under the EPC Contracts as at the valuation date of 23 January 2012 for indirect expropriation and 18 June 2013 for creeping expropriation (**Valuation Date**). The Valuation Date has been selected by the Claimant to eliminate the effect of any of the State's breaches on the valuation of the relevant assets, consistent with the principles enunciated by the

PCIJ in the *Factory at Chorzów* case.¹¹⁷⁸ The Claimant's damages model can be adjusted to fit other valuation dates.

L.3 Quantification of the Claimant's damages

711. The damages that the Claimant has sustained as a result of its expropriation by the State and the State's acts and omissions at the root of the Additional Claims (**Total Damages**) are divided into two main categories:

- (a) loss of rights to monies owed for work done, including profits and overheads, and costs incurred on the Project further to the EPC Contracts and the PDC Contract, as detailed out at length above, but remaining unpaid as at the date of the Project's termination by the State in violation of the BIT (**Unpaid Amounts**); and
- (b) lost profits and overheads that CMEC would have derived from future work that CMEC was entitled to perform and would have performed under the EPC Contracts and the PDC Contract but for the State's unlawful termination of the Project (**Lost Profits & Overheads**),

each subject to applicable interest.

712. The Claimant's quantification of the Unpaid Amounts and the Lost Profits & Overheads relies upon the evidence of Mr Michael Tonkin in his capacity as an independent quantum expert, himself relying where necessary and appropriate on the opinion of Mr Damian Connelly in his capacity as an independent engineering expert.

713. Mr Tonkin's investigations and calculations demonstrate that the Claimant's Total Damages is currently estimated to be **USD 156,022,913**.¹¹⁷⁹ The breakdown of this amount is presented in Mr Tonkin's report in the form of a final account,¹¹⁸⁰ in other words: "*a calculation of how much is payable from one Party to another Party once all matters of liability have been determined by the Tribunal*".¹¹⁸¹

¹¹⁷⁸ **CL-0025**, *Factory at Chorzów* (Merits), PCIJ Series A. No. 17, Judgment, 13 September 1928.

¹¹⁷⁹ Expert Report of Mr Michael Tonkin, paras. 1.2.1 and 5.3.1.

¹¹⁸⁰ *Ibid*, paras. 1.2.1 and 5.3.1.

¹¹⁸¹ *Ibid*, para. 4.1.5.

Item #	Description	Amount based on Letter 242 (USD)	MT's Assessment (USD)
1	Main Works	81,521,840	48,914,405
2	Dynamic Compaction Works	7,429,263	7,548,471
3	Piling Works	7,990,773	8,037,572
4	Downtime Cost	4,488,539	3,988,539
5	Site Maintenance Cost	328,357	328,357
6	Demobilisation Costs Due to Early Termination	904,592	402,125
7	Value of Cargoes	(2,923,892)	(2,923,892)
8	Compensation for Breach of Contract	5,615,298	0
9	Site Overheads	1,300,000	12,302,545
	Sub-Total Amount Due	106,654,770	78,598,123
10	Overhead and Profit	20,700,000	44,089,500
	Total (including Overhead and Profit)	127,354,770	122,687,623
11	Payment Received	(36,933,338)	(36,933,338)
	Total (after payments deducted)	90,421,432	85,754,285
12	Interest	13,610,900	70,268,628
	Total (including interest)	104,032,332	156,022,913
13	Letter 242 calc error	2,460,877	0
	Total Claimed as due	106,493,210	156,022,913

714. Mr Tonkin explains the rationale behind this sound approach (which CMEC itself had consistently adopted to present its claims to Alutrint upon the State terminating the Project):¹¹⁸²

"One of the challenges with valuing claims on an individual basis is that they can be valued without context, which may lead to duplication. It is therefore preferable, in my view, that claims are made within the context of a final account."

(a) The Unpaid Amounts

715. The Unpaid Amounts are reflected in CMEC's final account position detailed in CMEC's letter 242 to Alutrint dated 28 November 2012, as adjusted by Mr Tonkin in his report further to his independent investigations (including to account for an arithmetical error):¹¹⁸³

¹¹⁸² *Ibid*, 4.1.6.

¹¹⁸³ *Ibid*, 1.2.1.

Item #	Description	Amount based on Letter 242 (USD)	MT's Assessment (USD)
1	Main Works	81,521,840	48,914,405
2	Dynamic Compaction Works	7,429,263	7,548,471
3	Piling Works	7,990,773	8,037,572
4	Downtime Cost	4,488,539	3,988,539
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7	Value of Cargoes	(2,923,892)	(2,923,892)
8	Compensation for Breach of Contract	5,615,298	0
9	Site Overheads	1,300,000	12,302,545
	Sub-Total Amount Due	106,654,770	78,598,123

716. They encompass a wide variety of work or costs items as set out above, from which have been deducted the limited amounts totalling USD 36,933,338 paid to CMEC by Alutrint in respect of these works (**Paid Amounts**), covered in detail in Appendix MT-12.0 of Mr Tonkin's Report.
717. Each of these items (as well as the Paid Amounts and applicable interest) has been independently investigated by Mr Tonkin and is the subject of a dedicated appendix to his expert report.
718. Mr Tonkin has been instructed to assess the TWC and temporary works, the dynamic compaction works, and the cargoes shipped to Venezuela on the basis of value (together with the engineering design work assessed by Mr Connelly, **Value-Based Items**) and the balance of the work items on the basis of costs (**Costs-Based Items**).¹¹⁸⁴ This is because, as their respective nomenclature and nature suggest, the Value-Based Items have an intrinsic value that can be ascertained "*generally by reference to prices already set and agreed in the contract*"¹¹⁸⁵ while the Costs-Based Items correspond to "*actual and demonstrable expenditure incurred*"¹¹⁸⁶ by CMEC in furtherance of the Project and that it did claim or was entitled to claim from Alutrint to be placed "*in the same financial position it would have been but for the circumstances giving rise to the claim.*"¹¹⁸⁷

¹¹⁸⁴ *Ibid*, Appendix MT-1.2.

¹¹⁸⁵ *Ibid*, 4.1.9(a).

¹¹⁸⁶ *Ibid*, 4.1.10.

¹¹⁸⁷ *Ibid*, 4.1.10.

719. In the aggregate, Mr Tonkin opines that the Unpaid Amounts amount to **USD 78,598,123** at the Valuation Date.¹¹⁸⁸ CMEC refers the Tribunal to Appendices 1.4 to 9.0 of Mr Tonkin's report for the detailed assessment of each Value-Based Item and Costs-Based Item on an individual basis, relying in each case on appropriate documentation evidencing the reality of works performed and/or costs incurred by CMEC and correcting any duplication he identified.

(b) The Lost Profits & Overheads

720. Turning to the future Project works that CMEC was deprived of the right to perform as a result of the State's unlawful acts and omissions, CMEC only seeks at this stage to recover the related Lost Profits and Overheads (independently to any value that these future works may hold in and of themselves).

721. As explained above, CMEC indeed had an explicit right to 5% reasonable profit and 5% overhead in addition to the 2008 EPC Contract lump price of US \$414 million (*subject to variations and adjustments*), which together represent a 10% markup on costs. Mr Tonkin was thus instructed as follows:¹¹⁸⁹

"For the Overhead and Profit claim, the quantum assessment is to be based on sub-clause 1.2 of the PCC of the 2008 EPC Contract which included 5% for overhead and 5% for profit. The 2008 EPC Contract provided a direct cost of USD 414,000,000 plus 5% for overhead (USD 20,700,000) and 5% for profit (USD 20,700,000)."

722. On the basis of these instructions, Mr Tonkin adopted a three-step approach and concluded that the Lost Profits & Overheads amount to a total of **USD 44,089,500**.¹¹⁹⁰ Details of his assessment are shown in his final account appendix.¹¹⁹¹

(c) Interest

723. Article 6(2) of the BIT provides that "*compensation shall **include interest at a normal commercial rate from the date of expropriation until the date of payment***" (emphasis

¹¹⁸⁸ *Ibid*, 1.2.1 and 5.3.1.

¹¹⁸⁹ *Ibid*, Appendix MT-1.2.

¹¹⁹⁰ *Ibid*, 1.2.1 and 5.3.1.

¹¹⁹¹ *Ibid*, Appendix, MT-10.0.

added). Therefore, interest shall be calculated from "*before the expropriation*" or "*before the expropriation [became] public knowledge*" (whichever arose earlier) until the date of payment.

724. In the absence of any further interest calculation method provided under the BIT or otherwise agreed by the Parties in respect of compensation for breaches of the BIT and/or international law, CMEC requests the Tribunal to apply the interest rates provided in the EPC Contracts given these rates and their calculation are in line with what constitutes commercially reasonable interests in investor-state disputes such as this one.¹¹⁹² The EPC Contracts provide as follows on the matter:

- (a) EPC Contract 1: annual rate of 3% above the US discount rate; and
- (b) EPC Contract 2: annual rate of 2% above the US discount rate.

725. CMEC submits that these interest rates also show the advantage of:

- (a) entertaining a close relationship with the investment at the core of CMEC's claims in this arbitration (being the EPC Contract rights that the State expropriated from CMEC or otherwise mistreated under the BIT and international law); and, CMEC hopes,
- (b) being consensual among the Parties, these rates having by definition been previously agreed by CMEC and the State (through Alutrint) in the context of their commercial relationship under the EPC Contracts.

726. No doubt these sensible considerations guided the *Karkey* tribunal to adopt the same pragmatic solution in its ICSID award, in which Pakistan was ordered to pay for its international law breaches the 12% interest rate agreed with Karkey (through Pakistan's project company) under the commercial contract giving rise to Karkey's investment rights under the Turkey-Pakistan BIT.¹¹⁹³

¹¹⁹² **CL-0154**, I. Marboe, *Calculation of Compensation and Damages in International Investment Law*, Chapter 6 – Interest (Oxford University Press, 2nd edition, 2017), para. 6.248; **CL-0023**, R. Dolzer, U. Kriebaum and C. Schreuer, "Settling Investment Disputes", *Principles of International Investment Law* (Oxford University Press, 3rd ed, 2022), p. 431, para. 13(d).

¹¹⁹³ **CL-0022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, para. 996.

727. Accordingly, Mr Tonkin has been instructed to calculate pre-award interest as per the instructions set out in Appendix MT-1.2, which adopted the lower rate under the EPC Contract 2 for convenience.
728. On the basis of these instructions, Mr Tonkin has calculated that the total pre-award interest owed by the State to CMEC on both the Unpaid Amounts and the Lost Profits & Overheads amounts to **USD 70,268,628**.¹¹⁹⁴ CMEC refers the Tribunal to Appendix MT-11.0 of Mr Tonkin's report for a full description of the investigations and calculations carried out to reach this amount (to be adjusted depending on the actual date of the final award).
729. Having demonstrated the adequacy of the above interest rate in light of prevailing standards in ISDS these days, CMEC requests that the Tribunal order post-award interest on the same basis (i.e. 2% above the US discount rate compounded monthly) for the sake of consistency.

(d) Conclusion

730. As reflected in his final account appendix,¹¹⁹⁵ Mr Tonkin opines that the grand total of CMEC's damages are estimated to be **USD 156,022,913**, broken down in summary form as follows:

¹¹⁹⁴ Based on a start date of interest calculation as of 23 January 2012.

¹¹⁹⁵ Expert Report of Mr Michael Tonkin, Appendix MT-1.3.

Item #	Description	Amount based on Letter 242 (USD)	MT's Assessment (USD)
1	Main Works	81,521,840	48,914,405
2	Dynamic Compaction Works	7,429,263	7,548,471
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	Total (including interest)	104,032,332	156,022,913
13	Letter 242 calc error	2,460,877	0
	Total Claimed as due	106,493,210	156,022,913

M. ORDERS AND RELIEF SOUGHT

731. The Claimant respectfully requests that the Tribunal:

(a) **DECLARE** that

- (i) the State violated Article 6 of the BIT by expropriating the Claimant's investments in Trinidad and Tobago;
- (ii) the State violated Article 3(2) of the BIT by failing to accord the Claimant's investments in Trinidad and Tobago fair and equitable treatment;
- (iii) the State violated Article 3(3) of the BIT by impairing by unreasonable or discriminatory measures the management, maintenance, use, enjoyment and disposal of the Claimant's investments in Trinidad and Tobago;
- (iv) the State violated Article 13(2) of the BIT by failing to observe its commitments it entered into with the Claimant as regards its investments in Trinidad and Tobago;

(b) **ORDER** that

- (i) the State pay the Claimant the sum for its violations of the BIT or such other amount as the Tribunal determines is a consequence of any or all of (a)(i) to (iv) above, which is currently estimated to be **USD 156,022,913** (inclusive of pre-award interest);
- (ii) the State pay all of the costs and expenses incurred by the Claimant in dealing with the dispute and this arbitration, including relevant legal fees, expert fees, management costs and other expenses;
- (iii) the State pay all costs and expenses of the Tribunal and ICSID in this arbitration, including the fees and expenses of the Tribunal, the fees and expenses of any Tribunal assistant approved by the parties and Tribunal-appointed experts, and the administrative charges and costs of ICSID; and
- (iv) the State pay post-award interest on (b)(i), (ii) and/or (iii) above from the date of the Tribunal's award until full payment is made on (b)(i), (ii) and/or (iii) above at a commercially reasonable rate of 2% above the US discount rate, compounded monthly, or at such other rate and compounding period as the Tribunal determines will ensure full reparation;

(c) **DECLARE FURTHER** that

- (i) the award of damages and interest in (b)(i), (ii), (iii) and/or (iv) above is made net of the State's taxes;
- (ii) the State may not deduct taxes in respect of the payment of the award of damages and interest in (b)(i), (ii), (iii) and/or (iv) above; and

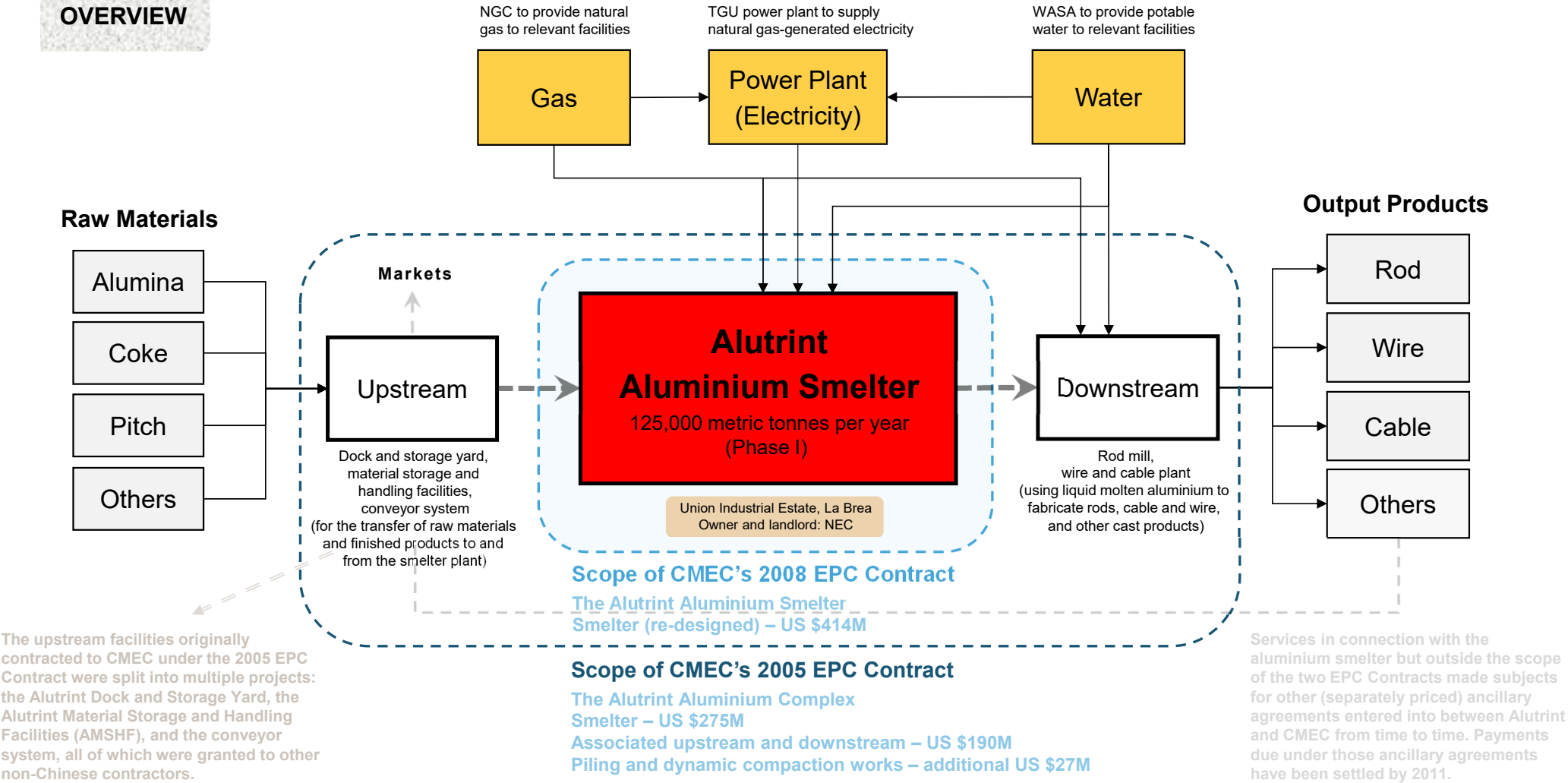
(d) **GRANT** such other relief as the Tribunal considers appropriate.

732. Respectfully submitted on behalf of the Claimant on 11 November 2024.

INDEX OF ANNEXES

Annex 1	Scope of the Project and CMEC's EPC Contracts
Annex 2	Diagram of State Control over Alutrint (including annotated explanations of the roles, functions, and powers of various actors in the hierarchy of control)
Annex 3	List of Alutrint Directors and Management
Annex 4	Public Statements by Trinidad and Tobago Ministers and Former Ministers regarding the Project
Annex 5	High-Level Government Officials and Other Influential Government Stakeholders Involved in the Claim Negotiations with CMEC
Annex 6	Overview of the CECs Relevant to the Project
Annex 7	Chronology on CEC 1033/2005 (including the timeline of the CEC application and litigation)

OVERVIEW



Entities and contracts involved in the Project

Alutrint: Alutrint Limited
(Holding vehicle of the Project with which multiple entities entered into contractual arrangements)

CMEC: China Machinery Engineering Corporation
(EPC Contracts and other ancillary agreements)

NEC: National Energy Corporation of Trinidad and Tobago Limited
(Deed of Lease and Collateral Memorandum of Lease; Pier User Agreement)

NGC: The National Gas Company of Trinidad and Tobago Limited
(Gas Supply Agreement)

TGU: Trinidad Generation Unlimited
(Power Purchase Agreement)

WASA: The Water and Sewerage Authority of Trinidad and Tobago
(Water Supply Agreement)

Categorisation of involved entities

State enterprises

Alutrint: 60% State ownership;
93% State actual capital contribution

NEC and NGC: 100% State ownership

TGU: 90% State ownership as of 2009;
100% State ownership since 2012

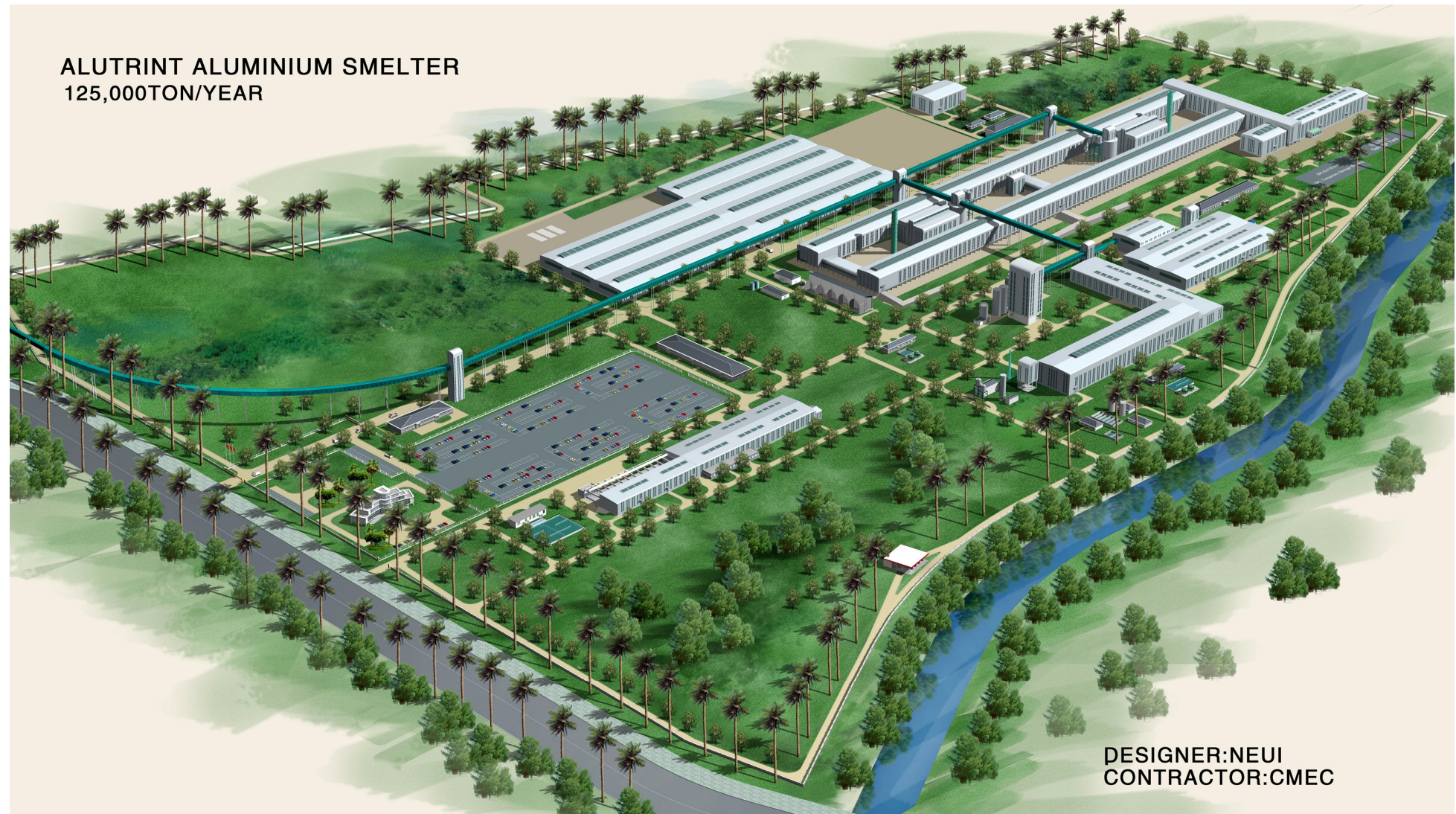
Statutory authority

WASA

Foreign enterprise

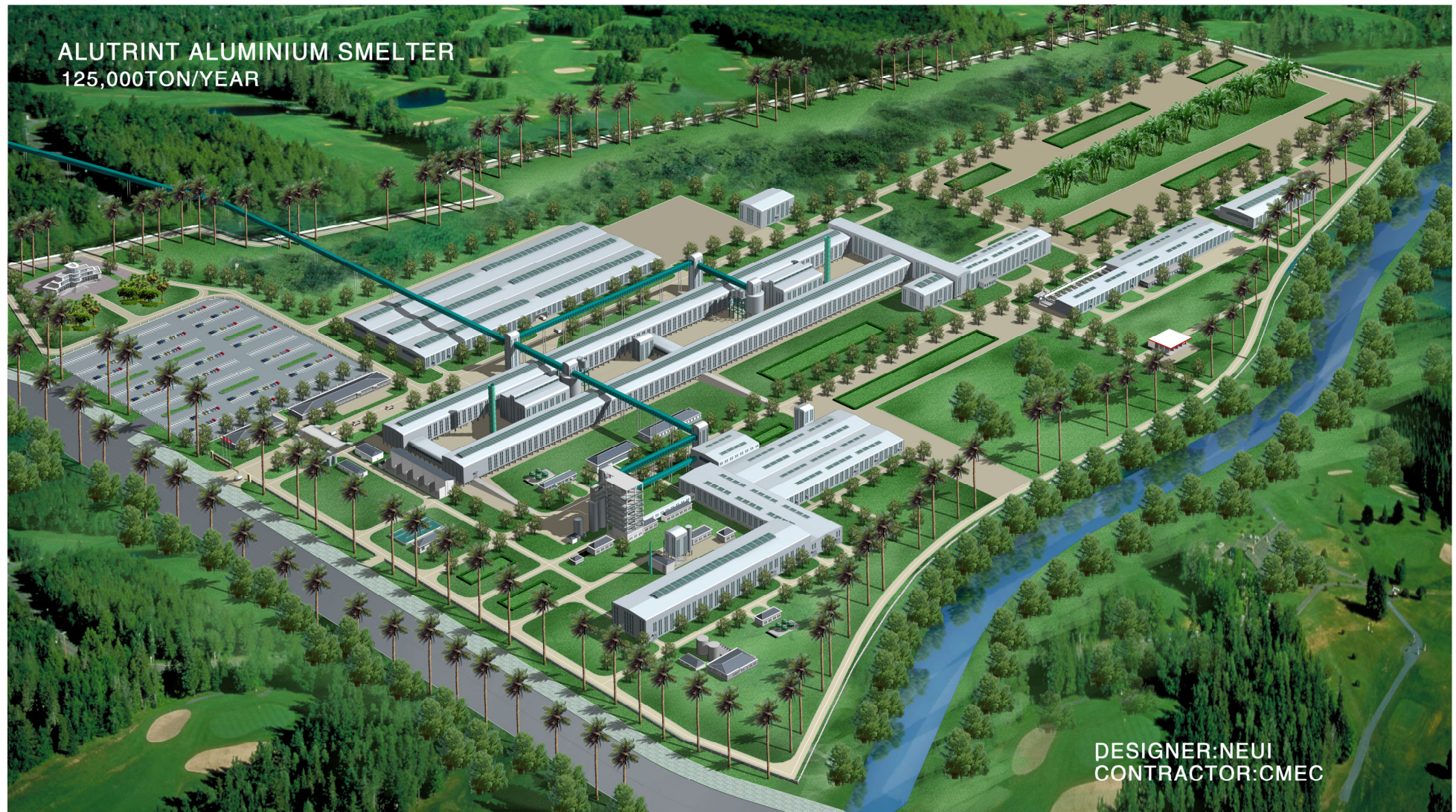
CMEC

VISUAL ILLUSTRATION OF THE COMPLETED SMELTER UNDER CMEC'S 2005 EPC CONTRACT



C-0598, Effect picture of the completed smelter under the 2005 EPC Contract.

VISUAL ILLUSTRATION OF THE COMPLETED SMELTER UNDER CMEC'S 2008 EPC CONTRACT (AS RE-DESIGNED)



C-0599, Effect picture of the completed smelter under the 2008 EPC Contract.

PICTURES OF THE SMELTER SITE AT THE TIME



C-0077, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006, p. 1031.

C-0240, Supplementary Report of Piling Test dated 15 June 2010, p. 7.

C-0597, Picture of the temporary work camp.

C-0500, *Chinese firm demanding US\$300M in compensation over stopped Alutrint aluminum project*, Trinidad and Tobago Guardian, 26 June 2023.

C-0524, SANAN, *EPC General Contracting Project of Trinidad & Tobago Alutrint Plant*, www.sanan-aaa.com/info/2015041112/201508181715401251.shtml (last accessed 5 September 2024).

THE UPSTREAM FACILITIES WITHIN CMEC'S 2005 EPC CONTRACT v THE AMSHF AS CONTRACTED TO ANOTHER CONTRACTOR



C-0600, Effect picture of the completed port under the 2005 EPC Contract.

C-0122, Report on the Cumulative Assessment of Impacts dated March 2007, pp. 2, 3, 5.

C-0519, GLF Construction Corporation, *Our Projects* → *Alutrint Material Storage Material & Handling EPC Contract* [sic], <https://www.glfusa.com/project/alutrint-material-storage-material-handling-epc-contract/> (last accessed 7 July 2024).

LIST OF PROJECT-RELATED CONTRACTS ENTERED INTO BY ALUTRINT (NON-EXHAUSTIVE)

Alutrint and CMEC

EPC Contracts

- Unsettled** 2005 EPC Contract dated 20 December 2005
- Unsettled** PDC Contract (Supplementary No. 1 to 2005 EPC Contract) dated 16 May 2008
- Unsettled** 2008 EPC Contract dated 30 October 2008
- Unsettled** Amendment to PDC Contract dated 19 January 2009
- Unsettled** First Amendment to 2008 EPC Contract dated 17 December 2009

Other Ancillary Agreements (including non-exhaustively)

- Settled** Geotechnical Investigation Contract dated 29 May 2006
- Settled** Geotechnical Investigation Contract dated 23 April 2007
- Settled** Piling and Dynamic Compaction Test Contract dated 3 July 2007

Alutrint and NEC

- Status unknown** Deed of Lease and Collateral Memorandum of Lease dated 15 June 2009

- Status unknown** Pier User Agreement dated 17 July 2009

Alutrint and NGC

- Status unknown** Gas Supply Agreement dated 15 June 2009

Alutrint, T&TEC and TGU

- Status unknown** Power Purchase Agreement dated 15 September 2009
(Alutrint as joint and several obligator to TGU with the Trinidad and Tobago Electricity Commission (T&TEC))

Alutrint and WASA

- Status unknown** Water Supply Agreement dated 23 July 2009

Given that these contracts were executed between state agencies in Trinidad and Tobago, their status (including whether terminated, paid or otherwise settled) is known to the State but not (presently) CMEC.

REFERENCES (in chronological order)

C-0073, Alutrint Aluminium Smelter Technical Design Agreement dated 4 November 2005.

C-0011, 2005 EPC Contract dated 20 December 2005.

C-0077, Environmental Impact Assessment Report for the Alutrint Aluminium Complex dated January 2006.

C-0081, Alutrint's Feasibility Study for the Alutrint Aluminium Complex dated March 2006.

C-0085, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated).

C-0088, Geotechnical Investigation Contract between Alutrint and CMEC dated 29 May 2006.

C-0106, Alutrint Aluminium Complex Technical Design Agreement for Dock and Material Handling Facilities dated 2 October 2006.

C-0107, Alutrint Aluminium Complex Technical Design Agreement for Metal Products Facility dated 2 October 2006.

C-0122, Report on the Cumulative Assessment of Impacts dated March 2007.

C-0125, Geotechnical Investigation Contract between Alutrint and CMEC dated 23 April 2007.

C-0131, Piling and Dynamic Compaction Test Contract between Alutrint and CMEC dated 3 July 2007 (entered into on 17 July 2007).

C-0133, Agreement of Dock and Material Handling Facilities for Alutrint Aluminium Complex dated 8 August 2007.

C-0137, Alutrint Aluminium Complex Project Technical Scheme Description dated 10 August 2007.

C-0012, PDC Contract (Supplementary No. 1 to 2005 EPC Contract) dated 16 May 2008.

C-0015, 2008 EPC Contract dated 30 October 2008.

C-0167, Letter from MOF to China EXIM Bank (with attachment) dated 8 January 2009.

C-0168, Technical Specifications dated 16 January 2009.

C-0013, Amendment to PDC Contract dated 19 January 2009.

C-0129, Letter from Alutrint to CMEC dated 27 February 2009.

C-0193, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009.

C-0016, First Amendment to 2008 EPC Contract dated 17 December 2009.

C-0232, Alutrint 2009 Audited Financial Statements dated 12 May 2010.

C-0240, Supplementary Report of Piling Test dated 15 June 2010.

C-0248, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010.

C-0575, State Enterprises Investment Programme 2012, dated 10 October 2011.

C-0576, State Enterprises Investment Programme 2013, dated 1 October 2012.

C-0577, State Enterprises Investment Programme 2014, dated 9 September 2013.

C-0364, ICC Case No. 18799/VRO/AGF/ZF, List of documents produced by GORTT on 20 December 2013 pursuant to the Tribunal's ruling.

C-0367, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014.

C-0500, *Chinese firm demanding US\$300M in compensation over stopped Alutrint aluminum project*, Trinidad and Tobago Guardian, 26 June 2023.

C-0519, GLF Construction Corporation, *Our Projects* → *Alutrint Material Storage Material & Handling EPC Contract* [sic], <https://www.glfusa.com/project/alutrint-material-storage-material-handling-epc-contract/> (last accessed 7 July 2024).

C-0524, SANAN, *EPC General Contracting Project of Trinidad & Tobago Alutrint Plant*, www.sanan-aaa.com/info/2015041112/201508181715401251.shtml (last accessed 5 September 2024).

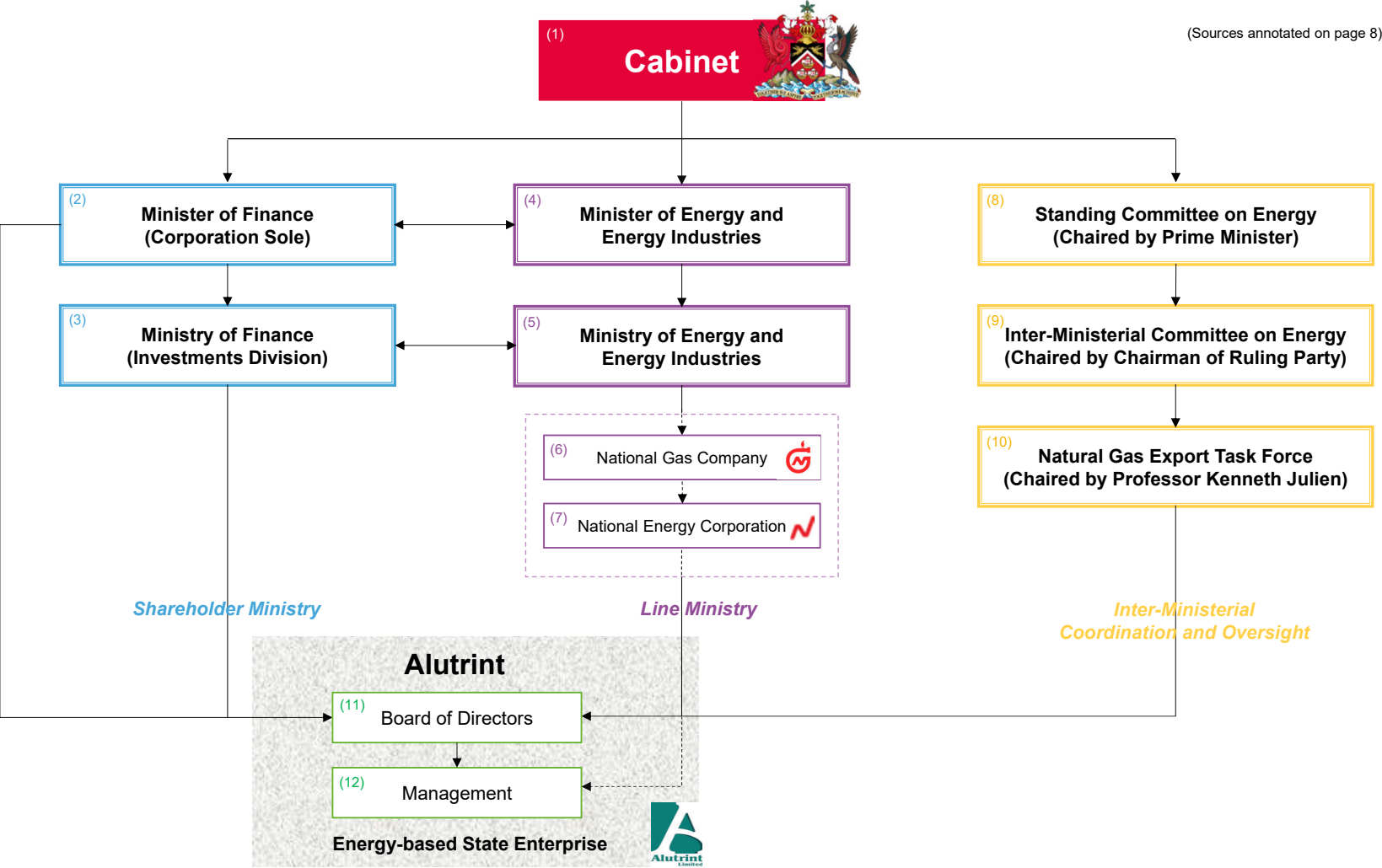
C-0588, State Enterprises Investment Programme 2025, dated 30 September 2024.

C-0598, Effect picture of the completed smelter under the 2005 EPC Contract.

C-0599, Effect picture of the completed smelter under the 2008 EPC Contract.

C-0600, Effect picture of the completed port under the 2005 EPC Contract.

C-0597, Picture of the temporary work camp.



In Trinidad and Tobago, the Minister of Finance (Corporation Sole) who manages the State's entire portfolio of investments and the Line Ministries in charge of specific sectors have dual control over State Enterprises.

The Ministry of Energy and Energy Industries is the Line Ministry for energy and energy-based State Enterprises and determines their day-to-day operations.

Energy and energy-based State Enterprises, including Alutrint, further answer to and act on the instructions from the Standing Committee on Energy and its sub-committees, which comprise the Prime Minister, relevant Ministers, Permanent Secretaries, and/or other prominent technocrats in the energy sector.

Roles, Functions, and Powers

- (1) The **Cabinet**, under the principle of collective responsibilities, exercises the shareholder rights and the responsibilities of Line Ministries with respect to the State Enterprises. It is accountable through Parliament to the public with regard to the management of the investments of the State.¹

The Cabinet consists of the **Prime Minister** (who is the leader of the Cabinet)² and other Ministers chosen from among the members of the House of Representatives and the Senators.³ It has the general direction and control of the **Government of the Republic of Trinidad and Tobago (GORTT)**,⁴ and by extension, the effective control of the State's affairs.⁵

- (2) The **Minister of Finance**, acting as Corporation Sole (i.e. a legal entity consisting of a single incorporated office that is occupied by a single natural person),⁶ has responsibility for the State's entire portfolio of investments of which the State Enterprise sector is a major element.⁷ The Minister of Finance is supported by the Investments Division at the Ministry of Finance in exercising corporate functions over the investment portfolio.⁸

GORTT acting through the Minister of Finance as Corporation Sole is the 60% majority shareholder of Alutrint.⁹ Sural, the 40% minority shareholder of Alutrint,¹⁰ had effectively disengaged from the smelter project and ceased any funding by December 2007.¹¹ Thereafter, it was GORTT alone that was financing Alutrint,¹² making available 93% of its equity funding at a cost of US \$74.1 million.¹³

- (3) The **Investments Division** at the **Ministry of Finance (MOF)**, once renamed as the "Ministry of Finance and the Economy" in 2012-2015 during the People's Partnership administration, acts on behalf of the Minister of Finance and carries out corporate functions such as representation of the Minister at shareholders' meetings.¹⁴ It is responsible for executing the investment policy as prescribed by the Cabinet. Accordingly, the mandate of the Investments Division includes oversight, monitoring and, where necessary, the rationalisation of GORTT's equity holdings in the investment portfolio.¹⁵
- (4) The **Minister of Energy and Energy Industries** heads the Ministry of Energy and Energy Industries.
- (5) The **Ministry of Energy and Energy Industries (MEEI)**, once renamed as the "Ministry of Energy and Energy Affairs" (MEEA) in 2010-2015 during the People's Partnership administration, is responsible for the management of the State's energy and mineral resources,¹⁶ including the policy management and control of State-owned energy-based companies.¹⁷ As the Line Ministry for those enterprises, the MEEI determines their day-to-day operations according to the relevant policy mandates.¹⁸

The MEEI presented to the Cabinet the proposal for the establishment of the Alutrint smelter and recommended that the MOF negotiate the required equity and loan financing for the Project, which was accepted by the Cabinet.¹⁹

Roles, Functions, and Powers

(6) The **National Gas Company of Trinidad and Tobago Limited (NGC)** was established in 1975 by GORTT as a wholly State-owned company.²⁰ It is the sole seller of natural gas in Trinidad and Tobago²¹ and plays a key role in the development of the country's natural gas based energy sector.²²

(7) The **National Energy Corporation of Trinidad and Tobago Limited (NEC)** was incorporated in 1979 as a wholly owned subsidiary of NGC.²³ One of its prime mandates is to develop strategies to monetise the State's natural gas reserves through business promotion and identifying new industries²⁴ (especially energy based downstream industries),²⁵ while providing the associated infrastructure to support these industries.²⁶

NEC, together with GORTT and NGC, financed and implemented the related infrastructural requirements for the Alutrint smelter, including: the Union Industrial Estate where the Alutrint smelter was located, the Trinidad Generation Unlimited (TGU) power plant to supply electricity, and the port, storage and handling, and conveyor belt facilities to receive inputs of raw materials.²⁷

NEC was also the sole incorporator and shareholder of Alutrint,²⁸ until GORTT (acting through the Minister of Finance as Corporation Sole) elected to directly hold the equity interest in Alutrint in August 2006.²⁹

(8) The **Standing Committee on Energy (SCE)** was created to facilitate the political aspects of industrial policymaking for the energy sector.³⁰ It is charged with the responsibility of managing the State's energy sector via Government direction and policy.³¹ The SCE makes recommendations to³² and reports directly to the Cabinet.³³

Prior to 2010, the SCE was chaired by the Prime Minister and comprised the relevant Ministers and their Permanent Secretaries such as the Minister of Energy and Energy Industries and the Minister of Finance, as well as various technocrats such as the Chairpersons and CEOs of NGC, NEC, the Petroleum Company of Trinidad and Tobago Limited (Petrotrin), and the Trinidad and Tobago National Petroleum Marketing Company Limited (NPMC).³⁴

In 2010, the SCE was reconstituted to comprise the Prime Minister as Chair, the relevant Ministers, and as necessary, the Chairpersons of NGC, Petrotrin, and NPMC.³⁵

Alutrint presented updates on the Project to the SCE and sought its approval.³⁶

(9) The **Inter-Ministerial Committee on Energy**, as with the SCE, was created to facilitate the political aspects of industrial policymaking for the energy sector.³⁷ It was chaired by the Chairman of the ruling party.³⁸

Roles, Functions, and Powers

- (10) The **Natural Gas Export Task Force (NGETF)** was a sub-committee of the SCE.³⁹ It was a technical committee that supported the works of NGC⁴⁰ and was staffed by technocrats drawn from various agencies and ministries related to the natural gas intensive industries.⁴¹ The NGETF set the gas price and was responsible for downstream energy projects.⁴²

Memberships of the NGETF were appointed by GORTT.⁴³ It was chaired by Professor Kenneth Julien,⁴⁴ the “energy tsar” and “father of the downstream energy industry” in Trinidad and Tobago.⁴⁵ Other members at the time included:⁴⁶ Leroy Mayers (Permanent Secretary, MEEI),⁴⁷ Alison Lewis (Permanent Secretary, MOF),⁴⁸ Malcolm Jones (Chairman and CEO, Petrotrin),⁴⁹ Barry Barnes (Former Minister of Energy and Energy Industries),⁵⁰ Keith Awong (Chairman, NGC and NEC),⁵¹ and Andrew Jupiter (Vice President, NEC).⁵²

The NGETF appears to have ceased to operate in 2010.⁵³

- (11) The **Board of Directors** of Alutrint was the highest governing body inside its legal structure.⁵⁴

GORTT (initially through NEC) is at all material times entitled to appoint the majority of Alutrint’s directors, including the Chairperson.⁵⁵ Further, since June 2012, the board of Alutrint has consisted solely of GORTT-appointed directors.⁵⁶

In this connection, relevantly, the appointments to the boards of State Enterprises in Trinidad and Tobago (including Alutrint) are viewed as largely politically-driven: individuals appointed are expected to subscribe to the philosophy of the political administration of the day, and commonly resign upon the assumption of office of a new administration.⁵⁷ A new administration also reviews the state boards and makes new appointments.⁵⁸

Despite the existence of named directors, the board of Alutrint appears to have long been non-functioning or dysfunctional, with no short, medium, or long-term mandates.⁵⁹

Please refer to [Annex 3](#): List of Alutrint Directors and Management for further details.

- (12) The **Management** of Alutrint was responsible for implementing the strategic objectives, if any, established by the board of directors.⁶⁰

After the last Acting CEO, Steve Mohammed, left Alutrint effective 28 February 2013,⁶¹ the management post has remained vacant.⁶²

Please refer to [Annex 3](#): List of Alutrint Directors and Management for further details.

Endnotes

1. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 4.
2. **C-0515**, Trinidad and Tobago Parliament, *Members* → *The Prime Minister*, <https://www.ttparliament.org/members/the-prime-minister/> (last accessed 23 May 2024), p. 1; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(a).
3. **C-0513**, Trinidad and Tobago Office of the Prime Minister, *About* → *Business and Departments of Government under the OPM* → *Cabinet*, <https://www.opm.gov.tt/about/business-and-departments-of-government-under-the-opm/> (last accessed 23 May 2024), p. 1.
4. *Ibid.*
5. **C-0515**, Trinidad and Tobago Parliament, *Members* → *The Prime Minister*, <https://www.ttparliament.org/members/the-prime-minister/> (last accessed 23 May 2024), p. 1.
6. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 4.
7. **C-0512**, Trinidad and Tobago Ministry of Finance, *Divisions* → *Investments Division*, <https://www.finance.gov.tt/divisions/investments-division/> (last accessed 23 May 2024), p. 2.
8. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 4.
9. **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Recital (E).
10. *Ibid.*
11. **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, paras. 94-100.
12. **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, paras. 170-171; **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4 (shareholders' contribution as at 31 October 2013).
13. **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, para. 5; **C-0367**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Adrian Bernard (with annexes) dated 17 January 2014, p. 4 (shareholders' contribution as at 31 October 2013).
14. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.
15. *Id.* p. 4.
16. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(f); **C-0496**, Trinidad and Tobago Gazette, Vol. 62, No. 6 (Public Statement of the Ministry of Energy and Energy Industries), 13 January 2023, p. 2.
17. **C-0496**, Trinidad and Tobago Gazette, Vol. 62, No. 6 (Public Statement of the Ministry of Energy and Energy Industries), 13 January 2023, p. 2.
18. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.
19. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(f).
20. **C-0531**, National Gas Company of Trinidad and Tobago Limited, *About Us* → *History* → *45th Anniversary Timeline*, <https://ngc.co.tt/about/history/45th-anniversary-timeline/> (last accessed 28 September 2024).
21. *Ibid.*
22. **C-0525**, Trinidad and Tobago Minister of Energy and Energy Industries, *For Investors* → *Companies*, <https://www.energy.gov.tt/for-investors/companies/> (last accessed 5 September 2024), p. 1.

Endnotes

23. **C-0525**, Trinidad and Tobago Minister of Energy and Energy Industries, *For Investors → Companies*, <https://www.energy.gov.tt/for-investors/companies/> (last accessed 5 September 2024), p. 1; **C-0509**, National Energy Corporation of Trinidad and Tobago Limited, *About → Who We Are*, <https://nationalenergy.tt/About/Who-We-Are> (last accessed 13 May 2024), pp. 1, 2.
24. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(d).
25. **C-0525**, Trinidad and Tobago Minister of Energy and Energy Industries, *For Investors → Companies*, <https://www.energy.gov.tt/for-investors/companies/> (last accessed 5 September 2024), p. 1.
26. **C-0509**, National Energy Corporation of Trinidad and Tobago Limited, *About → Who We Are*, <https://nationalenergy.tt/About/Who-We-Are> (last accessed 13 May 2024), p. 1.
27. **C-0248**, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010, paras. 4, 38.
28. **C-0008**, Articles of Incorporation of Alutrint dated 5 April 2005, p. 2.
29. **C-0096**, Letter from Alutrint to CMEC dated 25 August 2006, p. 1.
30. **C-0334**, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 15 (internal page reference 58).
31. **C-0468**, Trinidad and Tobago Office of the Prime Minister, *Statement by Prime Minister Rowley on his Meetings with Energy Companies*, 6 June 2019, <https://www.opm.gov.tt/prime-ministers-talking-points-on-energy-tour-of-duty-may-june-2019/> (last accessed 28 September 2024), p. 3.
32. See., e.g., **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 116; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 84 (the Cabinet made decisions on the Project by incorporating the recommendations of the SCE).
33. **C-0334**, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 15 (internal page reference 58).
34. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(b). See also **C-0146**, Letter from NGETF to CMEC dated 20 December 2007, p. 1 (the SCE was chaired by the Prime Minister and included the Minister of Finance, the Minister of Energy and Energy Industries, and other senior members of the Cabinet).
35. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(b).
36. See., e.g., **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 25; **C-0146**, Letter from NGETF to CMEC dated 20 December 2007, p. 1.
37. **C-0334**, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 15 (internal page reference 58).
38. *Ibid.*
39. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c).
40. **C-0501**, *UTT honours Prof Ken Julien*, Trinidad and Tobago Express, 31 October 2023, p. 6.
41. **C-0334**, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 15 (internal page reference 58).

Endnotes

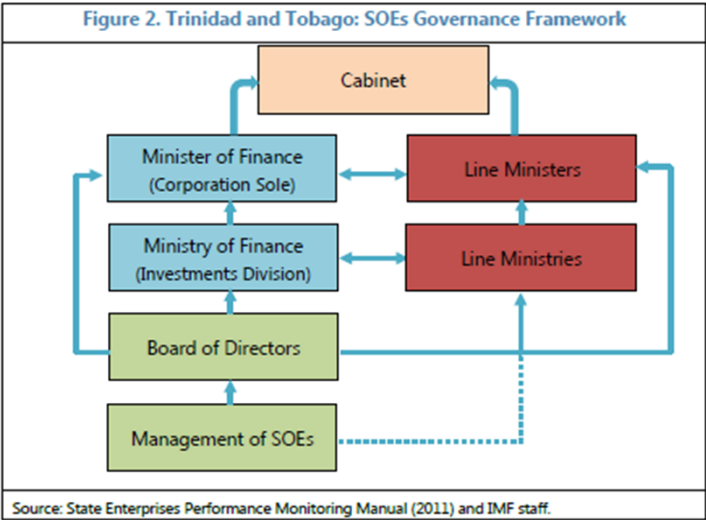
42. **C-0242**, *Ken Julien resigns from NEC*, Trinidad and Tobago Express, 30 June 2010.
43. **C-0146**, Letter from NGETF to CMEC dated 20 December 2007 (the footer listed the "[NGETF] *Members (as appointed by the Government of Trinidad & Tobago)*").
44. **C-0146**, Letter from NGETF to CMEC dated 20 December 2007; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c).
45. **C-0501**, *UTT honours Prof Ken Julien* (with full text of Prime Minister Keith Rowley's feature address), Trinidad and Tobago Express, 31 October 2023, pp. 7, 8.
46. **C-0146**, Letter from NGETF to CMEC dated 20 December 2007; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c).
47. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 7; **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 5.
48. **C-0378**, West Indies Stockbrokers Limited (WISE), *Former PS Alison Lewis joins Republic Board*, 26 June 2014, <https://wiseequities.com/home/newsarticle/3933> (last accessed 13 September 2024).
49. **C-0442**, *Malcolm Jones has died*, Trinidad and Tobago Express, 3 August 2017, p. 1.
50. **C-0298**, G. Alexander, *Senate pays tribute to Barnes*, Trinidad and Tobago Guardian, 21 October 2011.
51. **C-0521**, Memorial Tribute to Keith Awong, <https://ngc.co.tt/wp-content/uploads/pdf/advertisements/KAwong.pdf> (last accessed 3 September 2024).
52. **C-0365**, National Energy Corporation of Trinidad and Tobago Limited, 35th Year Anniversary Booklet (2014), pp. 28-29.
53. **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c).
54. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.
55. **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 70(a) (pursuant to the Letter of Agreement dated 18 May 2005 between NEC and Sural CA which preceded a full-blown shareholders' agreement, NEC is entitled to appoint three directors out of five); **C-0010**, Unanimous Shareholders' Agreement between GORTT and Sural Barbados dated 3 July 2007, Clauses 9.1.1 and 9.2.1 (pursuant to the shareholders' agreement, GORTT is entitled to appoint up to seven directors out of 11, including the appointment of the Chairperson).
56. **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 13, 90; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 46; **C-0502**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.
57. **C-0508**, Trinidad and Tobago Chamber of Industry and Commerce, Appointments to State Boards, <https://chamber.org.tt/wp-content/uploads/2015/11/appointments-state-boards-hk-mn-sep-24-15.pdf> (last accessed 9 May 2024), p. 1.
58. *Id.* p. 2.
59. **C-0327**, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 2.
60. **C-0444**, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.
61. **C-0345**, Email from C. Murray to J. Duo (with attachments) dated 4 April 2013, p. 1.
62. **C-0502**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.

Endnotes

Diagram on page 1 is based on the following sources:

With respect to the controlling and monitoring framework of State Enterprises in general:

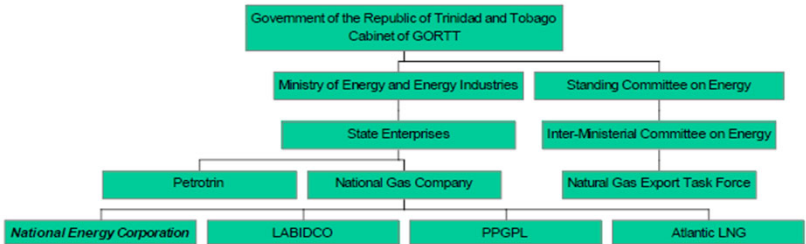
C-0444, International Monetary Fund, IMF Country Report No. 17/353 – Trinidad and Tobago Selected Issues, 4 October 2017, p. 5.



With respect to the controlling and monitoring framework in the energy sector, specific to energy and energy-based State Enterprises:

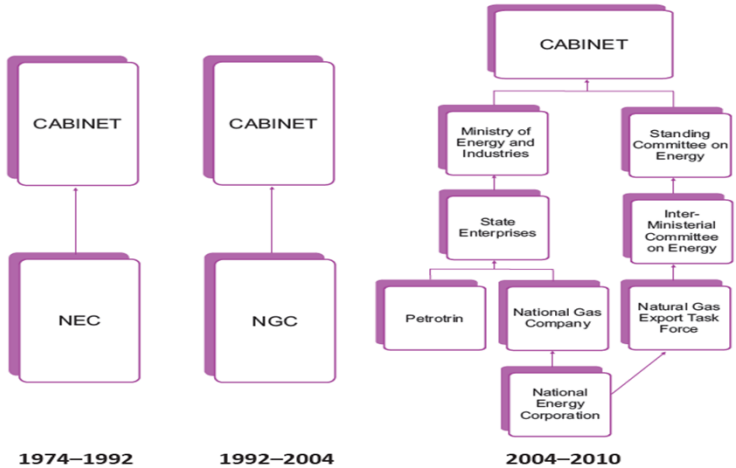
C-0085, CMEC and NEUI's Feasibility Study for the Alutrint Aluminium Complex dated April 2006 (as updated), p. 20 (Chinese); p. 17 (English).

The structure of the GORTT 's interests in the energy sector is shown below.



C-0334, L. Barclay, *The anatomy of a failed industrial policy developing aluminium industry in Trinidad and Tobago* (Research Note), UNCTAD, Transnational Corporations Vol. 21, No. 2, August 2012, p. 16 (internal page reference 59).

Figure 1. Institutional Framework created for policymaking in the gas intensive sector of Trinidad and Tobago, 1974 to 2010



Source: Punnett (2005), McGuire et al. (2009) and interviews with industry analysts.

ANNEX 3

List of Alutrint Directors and Management

DIRECTORSHIP

Board as at 8 April 2005 (date when Alutrint was incorporated)

Name	Position at Alutrint	Other position(s) at the time of appointment **
Keith Awong	Chairman	Chairman, NGC Chairman, NEC Member, NGETF
Kenneth Julien	Director	Member, SCE Chairman, NGETF Director, NGC Director, NEC
Leroy Mayers	Director	Permanent Secretary, MEEI Director, NEC Member, NGETF

Notes:

A1. Mr Keith Awong, Professor Kenneth Julien, and Mr Leroy Mayers were the named directors of Alutrint¹ when it was incorporated on 8 April 2005² by NEC as the sole incorporator.³

A2. Mr Keith Awong was Chairman of NGC and NEC from 2002 to 2007.⁴ He was part of the

* The positions listed in this table (and all tables below) are based on express statements in the documents and information presently available to CMEC, as annotated in the footnotes. The appointees might hold further positions at the relevant time.

+ In particular, based on Mr Leroy Mayers' description of the membership of the SCE (as set out in **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(b)), it appears that many appointees to Alutrint, such as Mr Keith Awong, Professor Kenneth Julien, Mr Leroy Mayers, Mr Malcolm Jones, Mr Prakash Saith, Ms Alison Lewis, Mr Andrew Jupiter, and Mr Frank Look Kin, might have served on the Prime Minister-chaired SCE by virtue of their senior positions at the relevant Ministries and/or major State-owned energy companies. Among them, Professor Kenneth Julien's and Mr Malcolm Jones' memberships on the SCE have been publicly reported and thus are so identified herein.

¹ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 24.

² **C-0007**, Trinidad and Tobago Companies Registry Online Search Facility, "Alutrint", <https://www.legalaffairs.gov.tt/> (last accessed 27 February 2023).

³ **C-0008**, Articles of Incorporation of Alutrint dated 5 April 2005, p. 2.

⁴ **C-0521**, Memorial Tribute to Keith Awong, <https://ngc.co.tt/wp-content/uploads/pdf/advertisements/KAwong.pdf> (last accessed 3 September 2024).

State delegation that visited Beijing in March 2005 and signed the MOU on behalf of NEC in his capacity as Chairman.⁵

- A3. Professor Kenneth Julien is, in the words of praise from Prime Minister Keith Rowley, the "*energy tsar*",⁶ "*architect-builder*",⁷ and "*father of the downstream energy industry*"⁸ of Trinidad and Tobago. He was appointed to serve on the SCE as early as 1992;⁹ at the time, he also chaired the NGETF¹⁰ and held directorships at NGC¹¹ and NEC.¹² Professor Julien was part of the State delegation that visited Beijing in March 2005 and signed the MOU on behalf of GORTT in his capacity as Chairman of the NGETF.¹³
- A4. Mr Leroy Mayers was Permanent Secretary in the MEEI from August 2004 to January 2012 (having previously served as Permanent Secretary in the MOF from June 2000 to August 2004),¹⁴ and a director of NEC from May 2004 to October 2010.¹⁵ After he retired from the position of Permanent Secretary in January 2012, Mr Leroy Mayers continued to work as a Consultant¹⁶ / Advisor¹⁷ to the MEEI.
- A5. In addition, both Mr Keith Awong and Mr Leroy Mayers were among the seven members of Professor Julien-chaired NGETF.¹⁸

⁵ C-0006, Memorandum of Understanding dated 23 March 2005, pp. 1, 3.

⁶ C-0501, *UTT honours Prof Ken Julien* (with full text of Prime Minister Keith Rowley's feature address), Trinidad and Tobago Express, 31 October 2023, p. 7.

⁷ *Id.* p. 2.

⁸ *Id.* p. 8.

⁹ *Id.* p. 6.

¹⁰ *Id.* p. 6.

¹¹ *Id.* p. 6.

¹² C-0365, National Energy Corporation of Trinidad and Tobago Limited, 35th Year Anniversary Booklet (2014), p. 45.

¹³ C-0006, Memorandum of Understanding dated 23 March 2005, pp. 1, 3.

¹⁴ C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 7; C-0193, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 5.

¹⁵ C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 11; C-0193, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 3.

¹⁶ C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 8. *See also* C-0319, *Energy Minister hires nine advisers*, Trinidad and Tobago Guardian, 5 April 2012 (where it is reported that Mr Leroy Mayers was retained as a Consultant in an advisory role after his official retirement from the Energy Ministry in January 2012).

¹⁷ C-0412, Verbatim Notes of the Fourth Meeting of the Joint Select Committee on Energy Affairs on 2 March 2016, p. 5.

¹⁸ C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c); C-0146, Letter from NGETF to CMEC dated 20 December 2007 (with the full list of members of the NGETF printed in the footer of the letter).

Board as at 18 May 2005 (date when Sural directors joined the board)

Name	Position at Alutrint	Other position(s) at the time of appointment
Keith Awong	Chairman	Chairman, NGC Chairman, NEC Member, NGETF
Malcolm Jones	Director	Chairman and CEO, Petrotrin Member, SCE Member, NGETF
Prakash Saith	Director	President, NEC
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- B1. On 18 May 2005, Dr Alfredo Riviere and Mr Renda Butler, respectively the President¹⁹ and Executive Vice President²⁰ of Sural Group, were appointed directors of Alutrint.²¹
- B2. On the same day, Professor Kenneth Julien and Mr Leroy Mayers were removed from Alutrint's board.²² The directorships were succeeded by Mr Malcolm Jones and Mr Prakash Saith.²³
- B3. Mr Malcolm Jones was Chairman and CEO of the Petroleum Company of Trinidad and Tobago Limited (**Petrotrin**) from 2002 to 2010,²⁴ which is a major state enterprise in the energy sector and the only fully integrated oil company in Trinidad and Tobago.²⁵ He also held

¹⁹ C-0006, Memorandum of Understanding dated 23 March 2005, p. 3.

²⁰ C-0543, LinkedIn Profile of Renda Butler, <https://www.linkedin.com/in/rendera-butler-ba559b6a> (last accessed 15 January 2024).

²¹ C-0368, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 13; C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 46.

²² C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 24.

²³ See the list of directors in C-0066, Minutes of meeting between Alutrint and CMEC on 15 June 2005 in Couva, Trinidad and Tobago (signed 17 June 2005), p. 1; and C-0096, Letter from Alutrint to CMEC dated 25 August 2006, p. 1.

²⁴ C-0442, *Malcolm Jones has died*, Trinidad and Tobago Express, 3 August 2017, p. 1.

²⁵ C-0525, Trinidad and Tobago Minister of Energy and Energy Industries, *For Investors -> Companies*, <https://www.energy.gov.tt/for-investors/companies/> (last accessed 5 September 2024), p. 2.

a Cabinet-approved position on the SCE,²⁶ as well as membership on the NGETF.²⁷

- B4. Mr Prakash Saith was President of NEC from 1999 to 2009.²⁸ He is the brother of Dr Lenny Saith, who has held several ministerial portfolios²⁹ including acting as the Minister of Energy and Energy Industries during 2006 to 2007.³⁰

²⁶ **C-0442**, *Malcolm Jones has died*, Trinidad and Tobago Express, 3 August 2017, p. 1.

²⁷ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c); **C-0146**, Letter from NGETF to CMEC dated 20 December 2007 (with the full list of members of the NGETF printed in the footer of the letter).

²⁸ **C-0365**, National Energy Corporation of Trinidad and Tobago Limited, 35th Year Anniversary Booklet (2014), p. 21; **C-0201**, *NEC president retires*, Trinidad and Tobago Express, 10 August 2009.

²⁹ **C-0560**, Parliamentary biography of Dr Lenny Saith (consolidated), pp. 1, 2.

³⁰ **C-0560**, Parliamentary biography of Dr Lenny Saith (consolidated), p. 2; **C-0506**, Trinidad and Tobago Ministry of Energy and Energy Industries, *About Us -> History -> Former Ministers of Energy*, <https://www.energy.gov.tt/about-us/history/former-ministers-of-energy/> (last accessed 9 January 2024), p. 1.

Board as at August 2006

Name	Position at Alutrint	Other position(s) at the time of appointment
Anthony Chan Tack	Chairman	Director, Petrotrin
Alison Lewis	Director	Permanent Secretary, MOF Member, NGETF
Andrew Jupiter	Director	Vice President, NEC Former Permanent Secretary, MEEI Member, NGETF
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- C1. In August 2006, in connection with a shareholder restructuring that resulted from GORTT's election to directly hold the equity interest in Alutrint (instead of through NEC), the board of Alutrint was restructured with Mr Anthony Chan Tack, Ms Alison Lewis, and Mr Andrew Jupiter replacing Mr Keith Awong, Mr Malcolm Jones, and Mr Prakash Saith as the GORTT-appointed directors.³¹
- C2. Mr Anthony Chan Tack has held senior technical and managerial positions with several energy sector state enterprises,³² including, at the time, as a director of Petrotrin.³³
- C3. Ms Alison Lewis served as Permanent Secretary in the MOF for many years until she retired from public service in or around 2013.³⁴ She was part of the State delegation that visited Beijing in March 2005 and witnessed the signing of the MOU in her capacity as Permanent Secretary.³⁵ Ms Alison Lewis was also responsible for and acted as the State's key point of contact for financing matters related to the Project.³⁶

³¹ C-0096, Letter from Alutrint to CMEC dated 25 August 2006, p. 1.

³² C-0522, NIHERST Chinese Icons Series – Anthony Chan Tack, <https://icons.niherst.gov.tt/icon/anthony-chan-tack-ch/> (last accessed 4 September 2024).

³³ C-0100, Minutes of meeting between Trinidad and Tobago Delegation and China EXIM Bank on 30 August 2006 in Beijing, China (signed 1 September 2006), p. 1 (Mr Anthony Chan Tack, in his capacity as director of Petrotrin, was part of the Trinidad and Tobago delegation that visited Beijing in August 2006 to discuss the financing of the Alutrint Aluminium Complex Project).

³⁴ C-0378, West Indies Stockbrokers Limited (WISE), *Former PS Alison Lewis joins Republic Board*, 26 June 2014, <https://wiseequities.com/home/newsarticle/3933> (last accessed 13 September 2024).

³⁵ C-0006, Memorandum of Understanding dated 23 March 2005, pp. 1, 3.

³⁶ C-0300, Exit Report from Alutrint Acting CEO Philip Julien as of 30 October 2011, p. 3 (under s. 4(b)(i)). *See also* C-0100, Minutes of meeting between Trinidad and Tobago Delegation and China EXIM Bank on 30 August 2006 in Beijing, China (signed 1 September 2006), p. 1 (Ms Alison Lewis as the head of the Trinidad and Tobago

- C4. Mr Andrew Jupiter was Permanent Secretary in the MEEI in 2004, until he was seconded to NEC to hold the position of Vice President.³⁷ He was later promoted to the top post of NEC's President, a position he held from 2009 to 2012,³⁸ as successor to Mr Prakash Saith (see Note B4 above).
- C5. In addition, both Ms Alison Lewis and Mr Andrew Jupiter were among the seven members of Professor Julien-chaired NGETF.³⁹

delegation); **C-0167**, Letter from MOF to China EXIM Bank (with attachment) dated 8 January 2009; **C-0199**, Letter from MOF to Sinasure dated 29 July 2009; **C-0206**, Letter from MOF to Sinasure dated 15 September 2009.

³⁷ **C-0365**, National Energy Corporation of Trinidad and Tobago Limited, 35th Year Anniversary Booklet (2014), pp. 28-29.

³⁸ *Id.* p. 28.

³⁹ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 19(c); **C-0146**, Letter from NGETF to CMEC dated 20 December 2007 (with the full list of members of the NGETF printed in the footer of the letter).

Board as at 12 February 2007

Name	Position at Alutrint	Other position(s) at the time of appointment
Leroy Mayers	Chairman	Permanent Secretary, MEEI Director, NEC Member, NGETF
Alison Lewis	Director	Permanent Secretary, MOF Member, NGETF
Andrew Jupiter	Director	Vice President, NEC Former Permanent Secretary, MEEI Member, NGETF
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- D1. On 12 February 2007, Mr Leroy Mayers re-joined the board of Alutrint as Chairman, replacing Mr Anthony Chan Tack.⁴⁰
- D2. See Notes A4 to A5 above for information regarding Mr Leroy Mayers' other positions at the time.

⁴⁰ C-0369, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 56.

Board as at 11 May 2010

Name	Position at Alutrint	Other position(s) at the time of appointment
Frank Look Kin	Chairman	Advisor, MEEI Retired President, NGC
Rene Monteil	Director	Various
Brian Besson	Director	Operations Manager, Trinity Exploration and Production Limited
Sidney McIntosh	Director	(Information not available)
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- E1. On 11 May 2010, Mr Leroy Mayers, Ms Alison Lewis, and Mr Andrew Jupiter resigned from the board of Alutrint.⁴¹
- E2. In their place, Mr Frank Look Kin was appointed Chairman, and Mr Rene Monteil, Mr Brian Besson, and Mr Sidney McIntosh were appointed directors of Alutrint.⁴²
- E3. Mr Frank Look Kin was President of NGC from 1996 to 2009, having previously served as the Chief Technical Officer in the MEEI from 1986 to 1990.⁴³ After retiring from the presidency at NGC, he consulted for the MEEI in the capacity of Technical Advisor.⁴⁴
- E4. Notably, Mr Frank Look Kin had been involved in the business of Alutrint considerably before his directorship appointment: for example, in December 2007, he was appointed to a GORTT-appointed committee, working alongside Professor Kenneth Julien, Mr Leroy Mayers, Ms Alison Lewis, and Mr Andrew Jupiter, to review the capital expenditure of the Project.⁴⁵
- E5. As for Mr Rene Monteil, Mr Brian Besson, and Mr Sidney McIntosh, all of whom only had a short stint with Alutrint:

⁴¹ C-0368, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 55.

⁴² *Ibid.*

⁴³ C-0545, LinkedIn Profile of Frank Look Kin, <https://www.linkedin.com/in/frank-look-kin-4622b441/> (last accessed 3 September 2024); C-0523, NIHERST Chinese Icons Series – Frank Look Kin, <https://icons.niherst.gov.tt/icon/frank-look-kin-ch/> (last accessed 4 September 2024); C-0483, *Dr. Frank Look Kin Reflects on His Years at NGC*, in GASCO News Vol. 30, No. 3, October 2020, p. 47 (internal page reference 45).

⁴⁴ C-0545, LinkedIn Profile of Frank Look Kin, <https://www.linkedin.com/in/frank-look-kin-4622b441/> (last accessed 3 September 2024).

⁴⁵ C-0381, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, para. 155.

- (1) Mr Rene Monteil has worked in various posts at various energy sector state enterprises, including NEC and NGC.⁴⁶ In particular, he was Vice President of NGC responsible for the promotion and development of gas-based industries, including value-added aluminium projects.⁴⁷ Mr Rene Monteil served on the board of Alutrint and several other state enterprises and public institutions as part of his public service.⁴⁸
- (2) Mr Brian Besson is an oil and gas professional, who until most recently was the Operations Manager at Trinity Exploration and Production Limited.⁴⁹
- (3) Limited public information is available with respect to Mr Sidney McIntosh.

⁴⁶ **C-0530**, Biography of René Monteil, <https://www.amazon.co.uk/Insights-Natural-Industry-Trinidad-Transition/dp/1916540368> (last accessed 26 September 2024).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ **C-0529**, Biography of Brian Besson, <https://denovo.energy/solutions/who-we-are/> (last accessed 26 September 2024).

Board as at 1 June 2010

Name	Position at Alutrint	Other position(s) at the time of appointment
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- F1. On 1 June 2010, Mr Frank Look Kin, Mr Rene Monteil, Mr Brian Besson, and Mr Sidney McIntosh by notice ceased to hold office as directors of Alutrint.⁵⁰
- F2. This leaves the situation where the only named directors on the Alutrint board were Dr Alfredo Riviere and Mr Renda Butler. This situation continued until 28 September 2011, when Ms Sushma Gopeesingh, Ms Joyce Lynch, and Mr Errol Baldeo were appointed to the board⁵¹ (see Note G1 below).
- F3. During this period, the Alutrint board was entirely **nonfunctioning**. As observed by Mr Steve Mohammed (then the Project Coordination Manager until promoted as the Acting CEO in November 2011 (see Note K3 below)), *"For the period May 2010 to October, 2011 (a period of 17 months), Alutrint functioned without a Board of Directors. There was no communication from either shareholder to Alutrint regarding its position, although the Company did communicate with its Line Ministry to address its concerns during that period. Notwithstanding the appointment of local Directors in September 2011, there have been no short, medium or long-term mandates from the BOD; and the Company is aware that there are Shareholders' issues which remain unresolved."*⁵²

⁵⁰ C-0368, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 58.

⁵¹ *Id.* paras. 58, 60.

⁵² C-0327, Alutrint Board Paper 2012-02-77: Alutrint Status Report for the period from November 2011 to May 2012, dated 5 June 2012, p. 2.

Board as at 28 September 2011

Name	Position at Alutrint	Other position(s) at the time of appointment
Sushma Gopeesingh	Chairman	Attorney-at-law
Joyce Lynch	Director	Advisor, MEEA
Errol Baldeo	Director	Advisor, MEEA
Alfredo Riviere	Director	President, Sural Group
Renda Butler	Director	Executive Vice President, Sural Group

Notes:

- G1. On 28 September 2011, Ms Sushma Gopeesingh, Ms Joyce Lynch and Mr Errol Baldeo were appointed directors of Alutrint by GORTT.⁵³ The then Minister of Energy and Energy Affairs, Mr Kevin Ramnarine, presented their instruments of appointment at the Ministry of Energy on 7 October 2011.⁵⁴
- G2. Ms Sushma Gopeesingh, an attorney-at-law by profession,⁵⁵ was (at the time) "*a graduate of recent vintage*" and "*with no project management or engineering experience*".⁵⁶ Ms Sushma Gopeesingh appears to be related to Dr Tim Gopeesingh, the Minister of Education in Kamla Persad-Bissessar's administration.⁵⁷
- G3. Ms Joyce Lynch, an attorney-at-law by profession,⁵⁸ was a Senior Legal Advisor who had worked at the Energy Ministry for years under multiple administrations.⁵⁹

⁵³ C-0368, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 60; C-0297, Letter from Alutrint to CMEC dated 14 October 2011.

⁵⁴ C-0296, *Alutrint Board Members appointed*, CTNT World, 7 October 2011.

⁵⁵ C-0389, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 12 November 2014, p. 24.

⁵⁶ These were the words of Prime Minister Keith Rowley when he described Ms Sushma Gopeesingh in a brief to Parliament regarding events related to CMEC's claim on the Project: C-0406, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), p. 119 (internal page reference 549).

⁵⁷ C-0562, Parliamentary biography of Dr Tim Gopeesingh (consolidated), pp. 1, 2.

⁵⁸ C-0389, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 12 November 2014, p. 24.

⁵⁹ C-0546, LinkedIn Profile of Joyce Lynch, <https://www.linkedin.com/in/joyce-lynch-3912bb2a/> (last accessed 3 September 2024); C-0319, *Energy Minister hires nine advisers*, Trinidad and Tobago Guardian, 5 April 2012; C-0320, *Energy Minister responds to article on nine advisers*, Trinidad and Tobago Guardian, 12 April 2012.

G4. Mr Errol Baldeo, an engineer by profession,⁶⁰ was then on assignment from Petrotrin to advise the MEEA.⁶¹ At Petrotrin, he held the position of Senior Manager of Marketing and Trading.⁶²

⁶⁰ **C-0389**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 12 November 2014, p. 24.

⁶¹ **C-0319**, *Energy Minister hires nine advisers*, Trinidad and Tobago Guardian, 5 April 2012; **C-0320**, *Energy Minister responds to article on nine advisers*, Trinidad and Tobago Guardian, 12 April 2012.

⁶² **C-0366**, Petrotrin's Facebook post on 11 January 2014, <https://www.facebook.com/Petrotrin/photos/senior-manager-marketing-and-trading-errol-baldeo-responds-to-media-questions/479331725509427/> (last accessed 27 September 2024).

Board as at 4 November 2011

Name	Position at Alutrint	Other position(s) at the time of appointment
Sushma Gopeesingh	Chairman	Attorney-at-law
Joyce Lynch	Director	Advisor, MEEA
Errol Baldeo	Director	Advisor, MEEA
Alfredo Riviere	Director	President, Sural Group
Alexander Preziosi	Director	Commercial Manager, Sural Group

Note:

H1. On 4 November 2011, Dr Alfredo Riviere gave notice that Mr Renda Butler would be replaced as Sural's appointed director by Mr Alexander Preziosi, a Commercial Manager of Sural Group who is also an attorney-at-law.⁶³

⁶³ C-0368, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 62, 67.

Board as at 28 June 2012 (date when Sural directors exited the board)

Name	Position at Alutrint	Other position(s) at the time of appointment
Sushma Gopeesingh	Chairman	Attorney-at-law
Joyce Lynch	Director	Advisor, MEEA
Errol Baldeo	Director	Advisor, MEEA

Notes:

11. On 28 June 2012, Dr Alfredo Riviere and Mr Alexander Preziosi resigned from the board of Alutrint,⁶⁴ leaving an all-GORTT board.
12. For completeness, Ms Indira Rampaul was further appointed to Alutrint's board at some time after April 2012⁶⁵ but before September 2013.⁶⁶ Ms Indira Rampaul (now Mrs Indira Rampaul-Cheddie) was at the time the Senior Legal Officer at the MEEA⁶⁷ and, most recently, the Permanent Secretary at the Office of the Attorney General and Ministry of Legal Affairs.⁶⁸
13. Ms Sushma Gopeesingh, Ms Indira Rampaul, and Mr Errol Baldeo were the three Alutrint directors (out of a four-member board) that visited CMEC in Beijing in October 2013 to attend the claim negotiations.

⁶⁴ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, paras. 13, 90; **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 46.

⁶⁵ **C-0322**, Alutrint Board Paper 2012-02-76: Alutrint Financial Report for the month ended 30 April 2012, p. 2 (the list of distribution did not include Ms Indira Rampaul).

⁶⁶ **C-0360**, Alutrint Financial Report for the month ended 30 September 2013, p. 1 (the list of distribution additionally included Ms Indira Rampaul as a director of Alutrint).

⁶⁷ **C-0548**, LinkedIn Profile of Indira Nicole Rampaul-Cheddie, <https://www.linkedin.com/in/indira-nicole-rampaul-cheddie-27325b85/> (last accessed 27 September 2024).

⁶⁸ **C-0548**, LinkedIn Profile of Indira Nicole Rampaul-Cheddie, <https://www.linkedin.com/in/indira-nicole-rampaul-cheddie-27325b85/> (last accessed 27 September 2024); **C-0503**, Trinidad and Tobago Office of the Prime Minister, Permanent and Deputy Permanent Secretaries of Government Ministries as at 5 February 2024, p. 1.

Board as at 24 June 2016 (and to date)

Name	Position at Alutrint	Other position(s) at the time of appointment
Leroy Mayers	Chairman	Advisor, MEEI
Heidi Wong	Director	Deputy Permanent Secretary, MEEI
Stephen Gardiner	Director	Advisor to the Prime Minister Deputy Chairman, NIDCO

Notes:

- J1. On 24 June 2016, Mr Leroy Mayers, Ms Heidi Wong, and Mr Stephen Gardiner were appointed directors of Alutrint.⁶⁹
- J2. Insofar as Mr Leroy Mayers is concerned, this marks his third directorship appointment at Alutrint, and his second term as Chairman. He previously served on the Alutrint board from 8 April 2005 to 18 May 2005, and from 12 February 2007 to 11 May 2010.
- J3. Mr Leroy Mayers was an Advisor to the MEEI at the time of this appointment in 2016.⁷⁰ His occupation is now listed as Retired Permanent Secretary.⁷¹ See Notes A4 to A5 above for his previous roles.
- J4. Ms Heidi Wong has worked at the MEEI (then renamed as the MEEA) since January 2012,⁷² serving as Deputy Permanent Secretary in 2016,⁷³ and now as Senior Energy Analyst.⁷⁴

⁶⁹ C-0502, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.

⁷⁰ C-0412, Verbatim Notes of the Fourth Meeting of the Joint Select Committee on Energy Affairs on 2 March 2016, p. 5.

⁷¹ C-0502, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.

⁷² C-0547, LinkedIn Profile of Heidi Wong, <https://tt.linkedin.com/in/heidi-wong-b1058016> (last accessed 14 September 2024).

⁷³ C-0412, Verbatim Notes of the Fourth Meeting of the Joint Select Committee on Energy Affairs on 2 March 2016, p. 5.

⁷⁴ C-0547, LinkedIn Profile of Heidi Wong, <https://tt.linkedin.com/in/heidi-wong-b1058016> (last accessed 14 September 2024); C-0502, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.

- J5. Mr Stephen Gardiner is an Advisor to the Prime Minister.⁷⁵ In addition, he serves as Deputy Chairman of the National Infrastructure Development Company Limited (**NIDCO**),⁷⁶ a state agency that directly supports Trinidad and Tobago's economic and social development agenda through the implementation of critical infrastructure projects.⁷⁷

⁷⁵ **C-0489**, Speaking Notes of Senator the Honourable Paula Gopee-Scoon, Minister of Trade and Industry, at the Phoenix Park Industrial Estate on 9 March 2022, p. 2 (Trade Minister Paula Gopee-Scoon addressing Mr Stephen Gardiner as Advisor to the Prime Minister).

⁷⁶ **C-0502**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 16; **C-0450**, NIDCO 2016 Annual Report dated 31 January 2018, pp. 6, 13.

⁷⁷ **C-0450**, NIDCO 2016 Annual Report dated 31 January 2018, p. 8.

MANAGEMENT

Name	Position at Alutrint	Period of tenure
Renda Butler	Managing Director	Mid 2005 to November 2007
Philip Julien	Acting CEO	November 2007 to November 2011
Steve Mohammed	Acting CEO	November 2011 to February 2013

Notes:

- K1. Mr Renda Butler was the Managing Director of Alutrint from mid-2005 until his removal from this position in November 2007.⁷⁸ He was said to have been "*functionally replaced*" by Mr Philip Julien.⁷⁹
- K2. Mr Philip Julien, son of Professor Kenneth Julien,⁸⁰ joined Alutrint as Project Development Manager around the time of its establishment in April 2005.⁸¹ Shortly after Mr Renda Butler was removed as the Managing Director, Mr Philip Julien assumed the management responsibilities as the Acting CEO.⁸² He submitted his resignation to the Minister of Energy and Energy Affairs on 30 September 2011,⁸³ and formally resigned from Alutrint in November 2011.⁸⁴
- K3. Mr Steve Mohammed, who initially joined Alutrint as the Project Coordination Manager in April 2007,⁸⁵ was designated the Acting CEO on 23 November 2011.⁸⁶ He left Alutrint

⁷⁸ **C-0383**, ICC Case No. 18799/VRO/AGF/ZF, Hearing Transcripts, Volume 2, 8 September 2014, 155:2-3; **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.23.

⁷⁹ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.24.

⁸⁰ **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.24; **C-0501**, *UTT honours Prof Ken Julien* (with full text of Prime Minister Keith Rowley's feature address), Trinidad and Tobago Express, 31 October 2023, p. 8.

⁸¹ **C-0542**, LinkedIn Profile of Philip Julien, <https://tt.linkedin.com/in/philipjulien> (last accessed 15 January 2024), p. 2.

⁸² **C-0380**, ICC Case No. 18799/VRO/AGF/ZF, Sural Barbado's Pre-Hearing Brief, 13 August 2014, para. 3.24. *See also* **C-0145**, Letter from CMEC to Alutrint dated 10 December 2007 (showing that CMEC started to address correspondences to Alutrint to Mr Philip Julien in his new CEO capacity since no later than December 2007).

⁸³ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 61.

⁸⁴ **C-0345**, Email from C. Murray to J. Duo (with attachments) dated 4 April 2013, p. 1.

⁸⁵ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, para. 61.

⁸⁶ *Id.* para. 69.

effective 28 February 2013.⁸⁷

- K4. Both Mr Philip Julien and Mr Steve Mohammed were the "Acting" CEOs during their respective tenures because their appointments as CEO were never formally ratified by Sural-appointed directors.⁸⁸
- K5. The position of CEO has since remained vacant to this day;⁸⁹ nor does Alutrint have a Corporate Secretary.⁹⁰

⁸⁷ **C-0345**, Email from C. Murray to J. Duo (with attachments) dated 4 April 2013, p. 1.

⁸⁸ **C-0315**, Minutes of Alutrint Board Meeting No. 2012-01 on 13 March 2012, pp. 4, 5.

⁸⁹ **C-0502**, Trinidad and Tobago Ministry of Finance, State Enterprises Board of Directors Appointment Listing, 30 January 2024, p. 48.

⁹⁰ *Ibid.*

ANNEX 4

Public Statements by Trinidad and Tobago Ministers and
Former Ministers Regarding the Alutrint Aluminium Project * +



Dr Keith Rowley
Prime Minister
2015 to present



Colm Imbert
Finance Minister
2015 to present



Fitzgerald Jeffrey
Member for La Brea
2007 to 2015



Patrick Manning
Prime Minister
2001 to 2010



Conrad Enill
Energy Minister
2007 to 2010



Dr Lenny Saith
Energy Minister
2006 to 2007



Karen Nunez-Tesheira
Finance Minister
2007 to 2010



Winston Dookeran
Finance Minister
2010 to 2012



Carolyn Seepersad-Bachan
Energy Minister
2010 to 2011



Jack Warner
UNC Chairman
2007 to 2013

* This Annex is a selection of representative statements by Trinidad and Tobago Ministers and former Ministers regarding the Alutrint Aluminum Project over the past two decades. It is not a complete collection of all statements made.

+ To the extent that some of the (earlier) statements were not recorded in video and/or official transcripts, quotations are derived from Trinidad and Tobago's three authoritative daily newspapers – Newsday, Guardian, and Express – which are known for their comprehensive coverage and timely reporting (typically on a next-day or other close-to-real-time basis). See generally C-0497, BBC, *Trinidad and Tobago media guide*, 3 February 2023, <https://www.bbc.com/news/world-latin-america-20073045> (last accessed 2 July 2024).

INDEX

Statements by Person

Dr Keith Rowley

3 October 2010 (reported), page 4
12 September 2014, pages 4-5
13 October 2015, pages 5-7
20 October 2016, page 7
9 November 2016, pages 7-8
2 December 2016, pages 8-10
20 October 2017, pages 10-11
3 October 2018, page 12
12 October 2022, page 12
25 June 2023, page 13

Colm Imbert

2 March 2018, page 14

Fitzgerald Jeffrey

2 July 2010 (reported), page 15
12 January 2011, page 15
12 September 2014, page 16

Patrick Manning

7 July 2009 (reported), page 17

Conrad Enill

16 June 2009 (reported), page 18
16 September 2009 (reported), page 19
22 October 2009 (reported), pages 19-20
4 December 2009, pages 21-22

Dr Lenny Saith

6 December 2006, pages 23-25

Karen Nunez-Tesheira

7 September 2009, page 26

Winston Dookeran

8 September 2010, page 27
14 September 2010 (reported), page 27

Carolyn Seepersad-Bachan

15 March 2010 (reported), page 28
6 July 2010 (reported), page 28
16 July 2010, pages 28-37
23 July 2010 (reported), page 37
1 October 2010, pages 37-40

Jack Warner

25 May 2010 (reported), page 41

Statements by Time

Dr Lenny Saith, 6 December 2006, pages 23-25

Conrad Enill, 16 June 2009 (reported), page 18

Patrick Manning, 7 July 2009 (reported), page 17

Karen Nunez-Tesheira, 7 September 2009, page 26

Conrad Enill, 16 September 2009 (reported), page 19

Conrad Enill, 22 October 2009 (reported), pages 19-20

Conrad Enill, 4 December 2009, pages 21-22

Carolyn Seepersad-Bachan, 15 March 2010 (reported), page 28

Jack Warner, 25 May 2010 (reported), page 41

Fitzgerald Jeffrey, 2 July 2010 (reported), page 15

Carolyn Seepersad-Bachan, 6 July 2010 (reported), page 28

Carolyn Seepersad-Bachan, 16 July 2010, pages 28-37

Carolyn Seepersad-Bachan, 23 July 2010 (reported), page 37

Winston Dookeran, 8 September 2010, page 27

Winston Dookeran, 14 September 2010 (reported), page 27

Carolyn Seepersad-Bachan, 1 October 2010, pages 37-40

Dr Keith Rowley, 3 October 2010 (reported), page 4

Fitzgerald Jeffrey, 12 January 2011, page 15

Dr Keith Rowley, 12 September 2014, pages 4-5

Fitzgerald Jeffrey, 12 September 2014, page 16

Dr Keith Rowley, 13 October 2015, pages 5-7

Dr Keith Rowley, 20 October 2016, page 7

Dr Keith Rowley, 9 November 2016, pages 7-8

Dr Keith Rowley, 2 December 2016, pages 8-10

Dr Keith Rowley, 20 October 2017, pages 10-11

Colm Imbert, 2 March 2018, page 14

Dr Keith Rowley, 3 October 2018, page 12

Dr Keith Rowley, 12 October 2022, page 12

Dr Keith Rowley, 25 June 2023, page 13



Incumbent Prime Minister Dr Keith Rowley¹

PNM

Prime Minister, 2015 to present
Leader of the Opposition, 2010 to 2015
Political Leader of the PNM, 2010 to present
Member for Diego Martin West, 1992 to present

Comments at a press conference during the afternoon break of the House of Representatives on 1 October 2010 (Express, 3 October 2010)²

The decision to scrap the aluminium smelter project at La Brea was based on purely political considerations and in spite of recommendations for consideration of its economic benefits by the Energy Minister and the Appeal Court's decision, Opposition Leader Dr. Keith Rowley said.

Speaking at a press conference during the afternoon break of the House of Representatives on Friday, Rowley said Minister of Energy and Energy Affairs, Carolyn Seepersad-Bachan, did not respond to questions he posed to her about why the Government decided to shut down the plant.

Earlier on in the House, Seepersad-Bachan, in response to Rowley's questions, said the Government stopped the project "as declared in the 2010/2011 budget speech".

Observations at the 4th Sitting of the 5th Session of the 10th Republican Parliament on 12 September 2014³

"[T]he cancellation of high-profile contracts such as the OPVs, aluminium smelter or Alutrint, has tarnished this country's image as an investment location.

Mr. Speaker, committed investors to the creation of the aluminium industry, including the downstream production of high-valued products have been prevented from making these investments as the Government took a political

A political decision that shut out "committed investors to the creation of the aluminium industry"

¹ **C-0559**, Parliamentary biography of Dr Keith Rowley (consolidated); **C-0514**, Trinidad and Tobago Office of the Prime Minister, *About* -> *The Prime Minister*, <https://www.opm.gov.tt/about/prime-minister/> (last accessed 23 May 2024).

² **C-0258**, M. Fraser, *Rowley: Decision to scrap smelter a political move*, Trinidad and Tobago Express, 3 October 2010.

³ **C-0385**, Trinidad and Tobago Hansard, 12 September 2014 (4th Sitting – 5th Session – 10th Republican Parliament), pp. 22-23 (internal page reference 370-371).

Indeed, concerns about the erosion of investment protection and investor confidence arose immediately after the People's Partnership Government's budgetary announcement of the cancellation of the Alutrint smelter in September 2010. See, for example, **C-0253**, S. Nero, *PNM: PM should reconsider smelter*, Trinidad and Tobago Guardian, 11 September 2010:

The opposition People's National Movement (PNM) is putting the country on alert that investor confidence may decline and our international credibility ruined citing government's decision to scrap the Alutrint Smelter in La Brea, according to its chairman John Donaldson. Speaking at yesterday's media briefing [...], he said the repercussion of government's rush decision would directly affect citizens and called on Prime Minister Kamla Persad-Bissessar to rethink her administration's policy as it relates to the non-establishment of the Alutrint smelter in La Brea.

He said the People's Partnership government ran the risk of tarnishing investor confidence in T&T, which would negatively affect the country's business climate. Donaldson criticised the manner in which the issue was addressed in the reading of the 2010/2011 budget presentation. [...]

"Concern was raised as to how the other states—China, Brazil and Venezuela—that participated in this very important project (would react), so that our international affairs would be impacted, not to mention of course investor confidence. If they chose to invest in T&T, in the back of their minds perhaps is that at some point in time things could happen which should not happen in a manner in which it happened in respect of the Alutrint Smelter." (emphasis added)

decision, prior to any court action, to close down the aluminium project. [...] And of course, the Government has rejected a 400-million concessionary loan towards this industry.”

Brief on the Alutrint Aluminium Project at the 6th Sitting of the 1st Session of the 11th Republican Parliament on 13 October 2015⁴

“[F]rom the Opposition Benches, I made a call to the Prime Minister asking her to tell us—[*Crosstalk*—from the Opposition Bench, I was speaking to the then Prime Minister—what is our situation with respect to the cancellation of the Alutrint plant. The Prime Minister to the best of my knowledge has never responded. So we came out of a position into Government never hearing from the Government what the situation is with respect to the cancellation of the Alutrint plant.

Members of the public would be of the view that we were building an aluminium smelter, the incoming Government did not like it and they just cancelled it. Okay, that was the Government’s prerogative, but from the Opposition side we were saying to the Government what has been the consequences of that, and the Government just would not answer.

I could remember at least four or five times in the Parliament, outside on platforms, in the media, asking the Prime Minister then: you have been to China, what is the situation with the cancellation? I have a short brief which I want to read for you, Madam Speaker, so that the population will now know that the cancellation for the smelter was not just a question of just cancel it and move on. There are consequences to the cancellation. Let me read for you from my brief.

Two representatives from China Machinery Engineering Corporation, CMEC, came here on October 07—that was last week—and they came with respect to the Government’s cancellation, the abandonment of the Alutrint project. So for the first time this company, CMEC in China, was the company that was building that plant.

Madam Speaker, you would recall that this project was being financed by the Government of Trinidad and Tobago, Sural of Venezuela and Votorantim of Brazil with debt financing in the order of US \$400 million. Madam Speaker, \$300 million of that on concessionary terms from Eximbank and \$100 million in normal terms.

The Chinese Government had selected CMEC as the contractor to undertake this project, because China had become a leader in technology of aluminium production and today produces large amounts of aluminium in many countries. The abandonment by the Government of Trinidad and Tobago through a simple one-line statement by the Minister of Finance in his budget speech lead to the following sequence of events:

1. The US \$400 million financing was effectively rejected by the Government and this money was no longer allocated.
2. Notwithstanding construction activities continued and were formerly terminated by Alutrint in January 2012—some two years after a decision to cancel the project was taken—it is not clear why this work was authorized by Alutrint.

So we had a statement of cancellation by the Government in 2010, but work continued until 2012. They were alive until 2012, and we were

⁴ **C-0406**, Trinidad and Tobago Hansard, 13 October 2015 (6th Sitting – 1st Session – 11th Republican Parliament), pp. 117-120 (internal page reference 547-550); **C-0407**, Live stream of the 6th Sitting of the 1st Session of the 11th Republican Parliament on 13 October 2015 (retrieved from: https://www.youtube.com/watch?v=5bnIW6P76oo&list=PL-SY0ndJDfa7Z4-CIHzfK_7_fGK8HpnUa&index=13, last accessed 26 June 2024); **C-0408**, Excerpt from the live stream of the 6th Sitting of the 1st Session of the 11th Republican Parliament on 13 October 2015 (1:16:41 - 1:25:09).

asking the Government what is happening, the Government would not answer.

3. CMEC worked on the site maintenance until September 10, 2014 following the instructions of Alutrint.

So all this time that the Government was not answering, Alutrint existed and was carrying on certain activities.

4. In October 2013 Alutrint sent a delegation headed by chairman of Alutrint and Miss Gopeesingh to Beijing to review the designing works and other documents.

So in 2013, years after the announcing of the cancellation, the Alutrint chairman was in China reviewing the design. I mean, of course, a graduate of recent vintage; a graduate of recent vintage was in China reviewing the designs of this world acknowledged plant from a country that is in that kind of business. I think the graduate was a law school graduate with no project management or engineering experience, gone to review the design of a complex aluminium smelter.

Claim documents—and listen to this carefully—while the Prime Minister was not answering what are the consequences of the cancellation, we now reach claim documents.

4. Claim documents were formerly submitted to Ministry of Energy and Energy Affairs and Alutrint in May 2013 and negotiations began.⁵

So the Government now finds itself involved in negotiations with claim documents at the Ministry of Energy and Energy Affairs and neither the Minister of Energy and Energy Affairs nor the Prime Minister, nobody in the Government would tell this to the people of Trinidad and Tobago. We are involved in a matter of claims now and negotiations.

5. Hatch and Company, consultants to Alutrint, sent a team to China to assist Alutrint with these negotiations. A delegation from the Government of Trinidad and Tobago headed by the then Prime Minister visited China in February 2014 and discussions were held among the Prime Minister of China, the then Prime Minister of Trinidad and Tobago and the chairman of CMEC. The result of that high-level meeting was the establishment of a committee to settle the claim in the shortest time.

So, there is a claim to be settled.

6. A working team was established comprising the Minister of Energy, the Minister of Trade, the Minister of Finance, Attorney General, Permanent Secretary in Energy, advisor to Energy, chairman of Alutrint and members from other Ministries.

So all of these people in the Government knew that this was going on, and questions were being asked: what are the consequences of the cancellation? What is the status? And not one of them would say a word to the people of Trinidad and Tobago. Today, the population knows that we are engaged in serious matters over the cancellation. So that working team was there.

7. The working team reviewed the documents submitted by CMEC and submitted a report to the Minister around September 2014.

A report exists since September 2014, the population does not know about that.

8. There has been no further response from the Government of Trinidad and Tobago, and as a result CMEC has submitted a letter to Alutrint to institute the dispute resolution clause in April, 2015.

“The working team reviewed the documents submitted by CMEC and submitted a report to the Minister around September 2014. A report exists since September 2014.”

⁵ Numbered paragraph 4 was used twice in the original document.

So April 2015 we are into dispute resolution as per the clause per contract. Alutrint sought an extension of this time and there has been no further development.

This matter now falls to the current Government of Trinidad and Tobago to pick up the pieces and we know not where it would lead. So that is just one of the situations which we will have to face in circumstances where revenues are short and we have to find a way to deal with the Chinese on this matter, because the Chinese have been very quiet, very patient, waiting to exercise their options.”

Q&A session at the Post Cabinet Press Briefing on 20 October 2016⁶

“Journalist: What about, let's say, projects. Now of course passed Prime Minister late sir Manning had vision about aluminium smelter as a major foreign investment type project. Does the administration have something on that scale?

Dr Rowley: Yeah, I tell you what we have on that. We owe the Chinese a lot of money on that. We owe the Chinese a lot of money because that aspect of our attempt to diversify our economy, using what we have to do that which was using our energy to go into aluminium – we should have been a new industry equal as diversification – it was rubbished by some people who flatly refused to acknowledge that in so doing we would have removed ourselves from the potential for involvement in this industry and also we would have incurred significant expenses. As I speak to you now, we are engaged in discussions with the Chinese about our liability to the government and agencies of China to the tune of hundreds of millions of dollars resulting from the closure of that project. [...] So right now, in answer to your question, very soon we'll conclude our discussions with the Chinese. And I mean, it might not be too early to tell you, that is my intention to, as part of all of these discussions and so on, to visit China next April. Hopefully by then we would be in a position to have softened our position and to have some cooperation with respect to how we treat with the Chinese situation.”

“We owe the Chinese a lot of money ... very soon we'll conclude our discussions with the Chinese.”

Speech at a Local Government election meeting in Point Fortin on 9 November 2016⁷

“The people of La Brea and you here in Point Fortin, this part of the country where the smelter was supposed to go, you voted for it, but the PNM didn't win the election. So you know what they [i.e. the 2010-2015 Kamla administration] did? The very first thing they did was to shut down the aluminium smelter.

I was looking at a document recently. It is this government's intention to restart an aluminium business in Wallerfield to make motor car wheels, and when I looked I saw three or four countries that went into that business after Trinidad and Tobago and guess what? Their business is booming and expanding and they're selling alloy wheels to the motor industry of the world

⁶ **C-0414**, Address (Q&A session) by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the Post Cabinet Press Briefing on 20 October 2016 (video retrieved from: <https://www.youtube.com/watch?v=nURkDnbCyWM>, last accessed 7 June 2024); **C-0415**, Transcription of address (Q&A session) by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the Post Cabinet Press Briefing on 20 October 2016 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=nURkDnbCyWM>); **C-0416**, J. Neaves, *TT owes China hundreds of millions*, Trinidad and Tobago Newsday, 21 October 2016.

⁷ **C-0422**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (video retrieved from: <https://www.facebook.com/PNM/TT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>, last accessed 15 May 2024); **C-0423**, Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at a Local Government election meeting in Point Fortin on 9 November 2016 (excerpt from video retrieved from: <https://www.facebook.com/PNM/TT/videos/point-fortin-nov-9-dr-keith-rowley/10157729580280472/>); **C-0424**, S. Santoo, *PM at election meeting: Aluminium project may return*, Trinidad and Tobago Express, 9 November 2016; **C-0425**, K. Felmine, *PM taking Alutrint 'saga' to Parliament*, Trinidad and Tobago Guardian, 11 November 2016.

and earning foreign exchange. Kamla Persad-Bissessar, Anil Roberts⁸ and a handful of misguided people denied Trinidad and Tobago the opportunity of doing that before. Happened so.

But when they shut down the aluminium smelter, we were in the Opposition. I asked the Prime Minister of Trinidad and Tobago to tell the people of Trinidad and Tobago what are the consequences, the financial consequences of that action of your government. She never answered. She wouldn't answer, Minister of Finance wouldn't answer, Minister of Energy wouldn't answer. From a public platform, after she went and came back from China, I asked her, Madam Prime Minister, you went to China, did this matter of the smelter come up and what are the arrangements in place for dealing with your actions of shutting down this smelter? She never answered. So, so tonight none of you here in Point Fortin in this audience, none of you at home listening to me know what is the situation with respect to the shutting down of the aluminium smelter. All you know is that somebody told you it would have killed people in La Brea or Point Fortin and it was shut down and end of the story. Well, you don't go so at all, because that matter was a contract between the Government of Trinidad and Tobago and a Chinese company owned by the Government of China. So when you take it upon yourself to play politics and shut it down, and I ask you what is the outcome and you don't answer. No, I can tell you, the people of Trinidad and Tobago, that there are serious consequences for that shut-down, because one of the first things, one of the first things I had to deal with when I came in as Prime Minister, is a Chinese company producing to me a claim for US \$200 million. And that is what your government is now dealing with, trying to pack it away down to a minimum.

“One of the first things I had to deal with when I came in as Prime Minister is a Chinese company producing to me a claim for US \$200 million.”

But what is worse, we had our priorities, we did other things before we started dealing with that. We are now in that situation and the company has now come to Trinidad. They met with the Minister of Finance yesterday and they outlined in detail all that has happened from the day they got involved with the project until now that they're making this claim. And what is shocking about it is the fact that in between all the time that I was talking to the UNC government and asking the Prime Minister and speaking to her as Opposition Leader to tell the country what was the story, they were there doing things and saying nothing about it. It was not to say they shut it down and turned away you know, they were actually engaging the company, engaging the issue, creating liabilities for us, offering to do this, not doing it, putting people from here, sending people to China. Would you believe that all this time the company was still running and that government led by Mrs Kamla Persad-Bissessar was absolutely silent, silent as a grave on a matter like this?

“The company has now come to Trinidad ... outlined in detail all that has happened from the day they got involved with the project until now that they're making this claim.”

But we now have to discharge serious liability for possible millions of U.S. dollars because the government of the day wanted to spite the PNM and to spite you here in La Brea and in Point Fortin and shut down a business that could have diversified our economy. That is a fact. What I just told you, there is a fact. And as a matter of fact, next week when the Parliament meets again, I am going to lay this matter out in the Parliament for the parliamentary record for all times, [...]

Statement on the Alutrint Aluminium Project at the 10th Sitting of the 2nd Session of the 11th Republican Parliament on 2 December 2016⁹

“[T]he Cabinet has authorized me to make the following statement on the status of the Alutrint Aluminium Smelter.

Since 2011, there has not been the provision of any comprehensive details with respect to the Alutrint Aluminium Smelter, despite repeated requests for

⁸ C-0552, Parliamentary biography of Anil Roberts (consolidated).
⁹ C-0045, Trinidad and Tobago Hansard, 2 December 2016 (10th Sitting – 2nd Session – 11th Republican Parliament), pp. 24-29; C-0427, Live stream of the 10th Sitting of the 2nd Session of the 11th Republican Parliament on 2 December 2016 (retrieved from: <https://www.youtube.com/watch?v=Im9400U1W6M&list=PL-SY0ndJDfa48xFTxeEICfvMj4ceMoJde&index=5>, last accessed 28 June 2024); C-0428, Excerpt from the live stream of the 10th Sitting of the 2nd Session of the 11th Republican Parliament on 2 December 2016 (0:50:12 - 1:02:15).

same. By way of background, in 2004, the Government of Trinidad and Tobago agreed to the execution of a Memorandum of Understanding, between the National Energy Corporation of Trinidad and Tobago (NEC); SURAL, a Venezuelan-based company [...] involved in a downstream production of aluminium products; and ALCOA, the Aluminium Company of America, for the development of an aluminium industry in Trinidad and Tobago.

The MOU was executed on March 23, 2005 by representatives of the Government of Trinidad and Tobago, SURAL and China Machinery Engineering Corporation, CMEC. The MOU established CMEC as the engineering, procurement and construction contractor with respect to the Trinidad smelter project. Subsequently, on December 20, 2005, the Commercial and Technical Agreement was entered into between Alutrint Limited and CMEC at a cost of US \$465 million, approximately TT \$3 billion.

CMEC was hired to design, construct, commission and conduct relevant training with respect to the construction of the 125,000 metric tonnes per annum aluminium smelter. This was the starter element of a planned aluminium industry in Trinidad and Tobago in an effort to broaden our economy away from oil, gas and petrochemicals.

In May 2008, in consideration of technical progress, following a request from Alutrint, CMEC redesigned the technical proposal and subsequently CMEC and Alutrint signed a new EPC contract in October 2008. Dynamic piling and site preliminary construction works commenced in January 2009. [...]

The Environmental Management Agency granted a Certificate of Environmental Clearance for the Project in April 2007, and this led to a petition being filed in the High Court of Trinidad and Tobago by certain groups who were opposed to the granting of the CEC by the EMA. The petition was heard in the High Court and on June 16, 2009, the judge lifted the CEC and ordered that further consultation be afforded to objectors. The EMA filed an appeal against the judge's decision and the Court of Appeal heard that appeal.

Having regard to the outcome of the court proceedings and the revocation of the CEC in July 2009, Alutrint served a formal notice on CMEC for a suspension of the site construction. In May 2010, CMEC resumed the site works in response to a subsequent notice from Alutrint. However, on September 08, 2010, the new Government took a decision that the Alutrint smelter project be discontinued with immediate effect and, in this regard, in October 2010, CMEC, following notice from Alutrint, removed 280 construction personnel from the construction site, leaving only maintenance staff on site. In December 2011, the site maintenance staff were removed and only the CMEC project office remained in Trinidad. Furthermore, in January 2012, Alutrint gave formal notice to CMEC that the project was to be halted.

On March 13, 2013, the Board of Alutrint agreed to terminate the EPC contract and associated agreements with CMEC, and by letter dated March 01, 2013, served notice of termination on CMEC, pursuant to Clause 16 of the EPC contract. Subsequently, by letter dated May 17, 2013, Alutrint received a claim purporting to be the final claim from CMEC in the amount of US \$169,597,715, approximately TT \$1 billion, which is US \$169 million approximately. This was pursuant to the conditions of the EPC contract and agreements related.

In February 2014, the then Government of Trinidad and Tobago undertook that Trinidad and Tobago would establish a team to make recommendations for settling the outstanding issues related to the project. Subsequently, Cabinet on February 13, 2014, agreed, inter alia, to the appointment of a committee to review CMEC's claims and to develop recommendations for a negotiated settlement. The team was established in March 2014; however, no progress was made in the discussions with CMEC.

In September 2014, the Government of Trinidad and Tobago requested an indemnity from CMEC, and as a show of good faith offered to pay US \$15 million to CMEC. This payment was never made. CMEC commenced

Alutrint smelter was the “starter element” of Trinidad and Tobago’s planned aluminium industry to broaden economy away from oil, gas and petrochemicals

In September 2014, the State offered to first pay US \$15 million’s good faith money to CMEC. This payment was never made.

demobilization activities and in September 2014, CMEC completed its demobilization activities and handed over the site to the NEC.

Having regard to the fact that there was no progress towards the resolution of issues with CMEC from the time that they were terminated in 2013, CMEC, by letter dated March 13, 2015 from its attorneys, gave notice of its intention to refer its claims against Alutrint and the Government of Trinidad and Tobago to the Dispute Adjudication Board in accordance with the contract. By letter dated March 20, 2015, Alutrint wrote to CMEC's attorneys for an extension to the commencement of the dispute adjudication and the extension was granted. The then Government did nothing further with respect to the resolution of these outstanding matters.

In furtherance of their claim, senior executives of CMEC visited Trinidad and Tobago in November and sought a meeting with the Government of Trinidad and Tobago. In November 2016, this Cabinet appointed a team led by the Permanent Secretary, Ministry of Finance and including the Permanent Secretary, Ministry of Energy and Energy Industries to meet, without prejudice, with CMEC, to get a proper understanding of the situation of facts with respect to the issues in dispute and the nature of CMEC's claim in respect of the Alutrint smelter project.

A without-prejudice meeting was held with CMEC on November 08, 2016, under the Chairmanship of the Minister of Finance, and CMEC indicated that the total claim against Alutrint is approximately US \$201 million, that is approximately TT \$1.3 billion. Madam Speaker, at the said meeting, CMEC indicated that they would like to find an amicable resolution to this matter and discussions were held with respect to various options.

CMEC's position is that they are required to be paid for onsite works which include dynamic compaction and pile test programmes, construction of contractor's and owner's site offices as well as a temporary work camp for 800 workers, ground improvement works, installation of a temporary batch plant, procurement of equipment, designs and reviews of designs and offshore support and visits from China.

Having regard to this state of affairs, the Cabinet has authorized the committee, comprised of technocrats from the Ministry of Finance and the Ministry of Energy and Energy Industries to engage experienced legal counsel to advise on the claims made by CMEC and to attempt to negotiate a settlement in the best interest of Trinidad and Tobago. Notwithstanding these developments, it is the view of this Government that even as we have permanently abandoned the smelting aspect of the process, there still remains opportunities for an aluminium downstream industry in Trinidad and Tobago using imported aluminium ingots. To this end, this Government continues to explore these possibilities and given other opportunities which might still be open to us.”

Parliamentary discussions at the 11th Sitting of the 3rd Session of the 11th Republican Parliament on 20 October 2017¹⁰

“**Hon. Khan:**¹¹ As you are aware, the former PNM administration had a policy position to become deeply involved in the aluminium industry. That is the basis for the using of the gas for the aluminium smelter plant in Point Lisas. That was the basis and the rationale for the building of the TGU plant in La Brea. As we speak, we are very much exposed in the electricity grid system for paying for unused power in take-or-pay arrangements with the power generation companies.

¹⁰ C-0445, Trinidad and Tobago Hansard, 20 October 2017 (11th Sitting – 3rd Session – 11th Republican Parliament), pp. 12-14 (internal page reference 434-436); C-0446, Live stream of the 11th Sitting of the 3rd Session of the 11th Republican Parliament on 20 October 2017 (retrieved from: https://www.youtube.com/watch?v=M4r42P7Cucg&list=PL-SY0ndJDfa4Y-k6b0B2-jcbq_8WtDEgF&index=8, last accessed 25 June 2024); C-0447, Excerpt from the live stream of the 11th Sitting of the 3rd Session of the 11th Republican Parliament on 20 October 2017 (0:22:16 - 0:34:45).

¹¹ C-0564, Parliamentary biography of Franklin Khan (consolidated).

That project was cancelled largely because of—I think, the Opposition, if I should say so myself. However, we still feel that we can salvage a downstream aluminium industry based on imported ingots, and that is the rationale for the Sural initiative because in the first plan we would have been producing our ingots for downstream work at the e TecK Park in Tamana. We still feel there is the potential. The work is still being done for a downstream aluminium industry especially for aluminium wheels because strange enough, over this time of depressed commodity prices, one of the few prices in the world that has not been depressed is aluminium and that is largely because of the motor car industry and aluminium wheels which has now become ubiquitous throughout the motor car industry. So that is the rationale for that.

Mr. Lee:¹² Just a follow-up question, Madam Chair. Seeing that you injected 35 million this year and a small amount budgeted for 2018 of 661, do you envisage another equity injection, more than 661?

Hon. Khan: Well, Sural is a joint venture partnership, so the partner has to invest some equity now. There is some kit that exists, as we speak, down at the e TecK Park in Tamana, and then there is a building that will be used by the company. So all this we hope should take some traction and pick up some speed this year.

[...]

Dr. Rowley: Let me clarify something here because I do not want it to be misunderstood and then come back. There is some settlement with respect to the closure of the project where the minority partner would have had claims against the State. Those matters are still in negotiation. However, both partners had agreed to go forward, and some of that settlement consideration would be taken into account. So that \$35 million is not directly into investment going forward. It will contribute in some way to whatever comes out in the settlement of the claims. There is a figure. A small figure, \$5 million? There were a number of arbitration proceedings which were triggered by the closure of the project by the last administration. Those arbitrations have been concluded. We have settled them, but the partners have agreed to go forward into a new business on the 60/40 arrangement. So I want you to have that in your mind as we go forward.

And while I am on this subject, Madam Chair, let me add something else. This is not the end of it. We are in discussions with the Chinese Government with respect to settlement of another claim with respect to the closure and abandonment of the smelter project. As a matter of fact, that is a much larger sum we have been dealing with and that is still in the pipeline. As a matter of fact, only tomorrow morning, or is it today?

Mr. Young:¹³ Today.

Dr. Rowley: Today, we have a meeting with the Chinese on that matter. So that is in the pipeline. It is not in the budget, but it is on the table.

[...]

Dr. Rowley: [...] The failures, and the arbitrations, and the liabilities that we are dealing with and facing now are as a direct result of the UNC shutting down the aluminium project which started with a smelter and downstreaming. What I just mentioned about the Chinese Government has to do with the UNC closing down the smelter. That was being funded by the Chinese Exim Bank. We have liabilities there in the approximation of about US \$100 million.”

“It is on the table.”

“We have liabilities there in the approximation of about US \$100 million.”

¹² C-0557, Parliamentary biography of David Lee (consolidated).

¹³ C-0572, Parliamentary biography of Stuart Young (consolidated).

Feature address at the official relaunch of the Alutech Project on 3 October 2018¹⁴

“We look at the world market, we look at the world economy and we try to answer the question, what can we get involved in, by saying what can we do here that we can put into the world market and earn significant monies. And when we looked at that, we saw that we had the possibility of doing well in the aluminium industry of the world because [...] We had our neighbours who had alumina or bauxite, we have energy, we have a good labour force, and we could bring them all together and get involved in the aluminium industry. [...] And persons who took the time to look at that industry, the decision makers in Trinidad and Tobago at the time, would have seen all the positives that gave the aluminium industry a growth path that was upwards going forward into the 21st century. And we decided to try and join it there. [...] Unfortunately, in Trinidad and Tobago, part of our national discourse is driven by people who make it a career of not informing themselves but being very content to mislead the public. And the public of Trinidad and Tobago was misled on our entry into the aluminium business because had we gone into that aluminium business then and not shut it down foolishly for political stupidity, today we would have been an exporter of aluminium products of the highest quality. [...] We did that to ourselves and we didn't do it for free. We did it at tremendous cost in dollars and cents, because we shut this smelter down in La Brea, creating persistent poverty down there. We exposed ourselves to hundreds of millions of dollars in claim down there.”

**Smelter
shut down
“foolishly for
political
stupidity”**

Speech at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022¹⁵

“[I]n an attempt to diversify this economy the Patrick Manning government decided that we wouldn't rely only on oil and gas. We'll try to go into aluminium and we had set about to build an aluminium smelter, [...] The UNC government came into office and they shut down the plant and chased out the contractor. You all remember that while they were in office, the contractor kept making their claims for that action. They ignored it, they danced around it, they did other things except deal with it because they didn't want you to know that there was a cost to that political action. We came into office, took a while for the claimants to come. They came to us and they're pressing for their compensation for what had gone on because the site with the project was well on the way. In fact, the power station TGU was built and ready to be used. That's what we're using now as one of our main power supply entities. That power was supposed to be going to the smelter but since there was no smelter, after years of wasting money, we got it into the National Grid. You know what the claim is – now that the Chinese company has said enough is enough, time is up, we want our money and therefore, Trinidad and Tobago, you owe us that claim and they intend to prosecute it now. The claim is for US \$380 million. That's [TT] \$2.5 billion for having improperly shut down a project which there was a contract and which there were works taking place and the project was politically extinguished. [...] I am talking here about US \$380 million with documents as a contractor which says that Trinidad and Tobago owes this money for work or for circumstances where there's a contract to be pursued. And that is left for the PNM to deal with because we're dealing with it now and at the appropriate time we will approach the Parliament and give the Parliament all the details surrounding this [...]”

**The project
was “politically
extinguished”
and
“improperly
shut down”,
with the
contractor
being “chased
out”**

¹⁴ **C-0456**, Feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>, last accessed 1 June 2024); **C-0457**, Transcription of feature address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the official relaunch of the Alutech Project on 3 October 2018 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/alutech-relaunch/272036096766234/>); **C-0458**, L. Sorias, *PM slams aluminium shutdown*, Trinidad and Tobago Express, 3 October 2018; **C-0459**, P. Christopher, *The return of the Alutech plant*, Trinidad and Tobago Guardian, 3 October 2018.

¹⁵ **C-0001**, Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>, last accessed 14 February 2023); **C-0002**, Transcription

Address at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023¹⁶

“But one of the things we’re doing right now is receiving and treating with an arbitration where the Chinese company that was going to build the aluminium smelter, which was stopped mid-stream, is now pressing its claim legally for US \$300 million. [...] When I went to China, I deliberately did not treat this matter and the Chinese authorities were gracious enough not to raise it during my visit. But now that years have passed and we have not settled that claim, it is now a legal matter and the lawyers, which don’t come cheap, the lawyers are talking. We have seen it not to be 300 million, but it is certainly at the end of the day something substantial. It takes your government to deal with that, not those who had the Drummit at the Summit to stop the project even though the big power station was already built. They had surplus power built there and waiting. They stopped the project. Going to court, the court didn’t stop it, the court said the EMA must redo something with the CEC, and then the government changed. It is the government that stopped it. [...] That’s why today we don’t have an aluminium business. And when I keep talking about diversification, that was a major direction of diversification for this country, moving away from oil and gas into aluminium and by-products even produce like pots and pans and motor car wheel, and that’s where we’re going, but they stopped that. Ask them what they did in the five years in Government to replace it. They didn’t even deal with the contractor and their fee. It now falls to my government to deal with that. The current Attorney General, he is dealing with that. A claim for hundreds of millions of U.S. dollars because the contractor had done some work, had bought equipment, has liabilities which they could defend in the court.”

“The Chinese company is now pressing its claim legally” –

“it is certainly at the end of the day something substantial.”

of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Diego Martin West 49th Constituency Conference on 12 October 2022 (excerpt from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>); C-0494, PNM's Facebook post on 14 October 2022, regarding Prime Minister Dr Keith Rowley's speech at the PNM's Diego Martin West 49th Constituency Conference; C-0003, R. Taitt, *PM: Chinese contractors make \$2.5 billion claim: 'Improper' cancellation of smelter plant project in 2010...*, Trinidad and Tobago Express, 13 October 2022.

¹⁶ C-0498, Address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>, last accessed 18 September 2024); C-0499, Transcription of address by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at the PNM's Special Convention and Local Government Elections 2023 Campaign Launch on 25 June 2023 (excerpt from video retrieved from: <https://www.facebook.com/drkeithrowley/videos/1147446162879991>); C-0500, *Chinese firm demanding US\$300M in compensation over stopped Alutrint aluminum project*, Trinidad and Tobago Guardian, 26 June 2023.



Finance Minister Colm Imbert¹⁷

PNM

Minister of Finance, 2015 to present
Opposition Member, 2010 to 2015
Minister of Works and Transport, 2005 to 2010
Chairman of the PNM, 2018 to 2022
Member for Diego Martin North/East, 1992 to present

Remarks at the 20th Sitting of the 3rd Session of the 11th Republican Parliament on 2 March 2018¹⁸

“We also have a claim which the former administration left for us as a gift when they cancelled the aluminium project, and the current claim on that from CMEC, which is a state-owned company, China Machinery Engineering Corporation. The current claim against the Republic of Trinidad and Tobago for the capricious decision of the last Government to simply cancel that project, is US \$201 million or almost \$1.4 billion which taxpayers of this country will have to treat with.”

Taxpayers of Trinidad and Tobago “will have to treat with” CMEC’s claim for the “capricious decision” to cancel the project

¹⁷ **C-0555**, Parliamentary biography of Colm Imbert (consolidated); **C-0528**, Trinidad and Tobago Ministry of Finance, *Our Ministry* -> *Executive Team* -> *Minister of Finance*, <https://www.finance.gov.tt/our-people/minister-of-finance/> (last accessed 22 September 2024).
¹⁸ **C-0451**, Trinidad and Tobago Hansard, 2 March 2018 (20th Sitting – 3rd Session – 11th Republican Parliament), p. 10 (internal page reference 676); **C-0452**, C. Chan Tack, *Imbert slams PP for \$1.4B claim*, Trinidad and Tobago Newsday, 3 March 2018.



**Former Member of Parliament (MP) for La Brea
Fitzgerald Jeffrey¹⁹**

PNM

Minister of State in the Ministry of Science, Technology and
Tertiary Education, 2007 to 2010
Opposition Member, 2010 to 2015
Member for La Brea, 2007 to 2015

Appeal to the People's Partnership Government for reconsideration of the Alutrint
Aluminium Project (Express, 2 July 2010)²⁰

Member for Parliament for La Brea Fitzgerald Jeffrey of the People's National Movement, yesterday called on the People's Partnership Government to allow construction of the controversial Alutrint aluminium smelter.

He said Government needed to think of the benefits to the country, before considering scrapping the multi-billion dollar project. [...]

Jeffrey said yesterday *“I would like the People's Partnership to realise that the election is now over and it is time to look at this thing rationally.”*

Jeffrey said it was public knowledge that the health and environment concerns raised over the construction of the smelter are non issues but *“the benefits to the country were very real.”*

He said *“Let us look at the benefits to not just the people of La Brea but the people of Trinidad and Tobago.”*

Jeffrey said he knows *“deep down Prime Minister Kamla Persad-Bissessar wants to build the smelter”* but because of the bias of the members of the Congress of the People, she was opposed to the project.

“I am a member of the PNM but I am first a Trinidadian, let us look after the interest of the people,” he said.

Observations at the 23rd Sitting of the 1st Session of the 10th Republican Parliament on 12
January 2011²¹

“I want to go to the situation with the Union Industrial Estate. It hurts, because we see the shifting of the goal post. Initially, they say no smelter on health grounds. As soon as facts were brought forward showing that the health and environmental issues are no longer valid, they came with natural gas. How the natural gas—[...] no sooner than we showed them that the gas usage was minimal, they jumped on the whole question—they come with the economic argument, and we hear ‘No smelter’. What was done basically is the abuse of office. It is the abuse of office to deprive the people of La Brea of their just due.”

From health grounds, to gas usage, then to economic argument: the “shifting goal post” and “abuse of office”

¹⁹ C-0563, Parliamentary biography of Fitzgerald Jeffrey (consolidated).

²⁰ C-0243, *La Brea MP: Please don't stop the smelter*, Trinidad and Tobago Express, 2 July 2010.

²¹ C-0268, Trinidad and Tobago Hansard, 12 January 2011 (23rd Sitting – 1st Session – 10th Republican Parliament), p. 120 (internal page reference 458).

Observations at the 4th Sitting of the 5th Session of the 10th Republican Parliament
on 12 September 2014²²

“[W]hen we look at the performance of this Government we know for a fact that the majority of the state resources is spent in UNC-controlled constituencies; [...] I want to look at my La Brea constituency. When this Government came into office they closed down the Alutrint smelter, putting thousands of persons who were involved, or who were working on the construction site, they sent them home and nothing replaced the Alutrint smelter. So for four and a quarter years you had no replacement and, therefore, as a consequence, you would find unemployment was ridiculously high in the La Brea constituency, and, I dare say, in some parts of the constituency, unemployment is as high as 50 and 60 per cent. Debe will have full employment, Couva will have full employment, Chaguanas will have full employment, but La Brea and Point Fortin, and even, I dare say, Port of Spain South and so on, would have a different story. Mr. Speaker, and this was deliberately created by this Government.”

As a matter of fact, no replacement project was ever put into place in La Brea after the cancellation of Alutrint smelter

²² C-0385, Trinidad and Tobago Hansard, 12 September 2014 (4th Sitting – 5th Session – 10th Republican Parliament), p. 64 (internal page reference 412).



Former Prime Minister Patrick Manning²³

PNM

Prime Minister, 1991 to 1995, 2001 to 2010

Minister of Finance, 2001 to 2007

Leader of the Opposition, 1986 to 1990, 1995 to 2001

Political Leader of the PNM, 1987 to 2010

Member for San Fernando East, 1971 to 2015

Comments in regard to the 16 June 2009 High Court ruling (Express, 7 July 2009)²⁴

Prime Minister Patrick Manning said last week that the smelter would be built despite a High Court ruling to stop works at the site. He said work on the site would not stop unless the court rejects the project.

“The cost of stopping work on that project, it is a very high, so what we have decided to do is to continue until such time as there is a rejection of the project and that has not happened, it is unlikely that will happen,” he said.

Manning said the project would continue pending a review of an application for a CEC by the EMA.

“The court had objected to the process under which the CEC was granted and not to the smelter plant itself. The courts did not object to the smelter, the courts just said the process needed to be beefed up in a certain area and that’s what we are seeking to do now,” Manning said.

Manning said the EMA was moving as fast as possible to ensure that if a CEC is granted in the future, it is in accordance with all the procedure and to obtain the satisfaction of the court. He said the Government has spent a great deal of money of the project.²⁵

“Plenty money...It costs hundreds of millions,” he said.

“The court had objected to the process under which the CEC was granted and not to the smelter plant itself.”

Project would continue while process is beefed up.

²³ **C-0571**, Parliamentary biography of Patrick Manning (consolidated).

²⁴ **C-0191**, *Appeal filed to resume smelter construction*, Trinidad and Tobago Express, 7 July 2009. See also **C-0187**, L. Hutchinson-Jafar, *Work still under way at Trinidad smelter site*, Jamaica Gleaner, 26 June 2009 (“Asked if the project would be stopped, Prime Minister Patrick Manning said: ‘The answer to that is no, it will not stop.’”).

²⁵ According to the affidavit evidence of Leroy Mayers, Permanent Secretary in the Ministry of Energy and Energy Industries and Chairman of Alutrint, the overall project (comprising the aluminium smelter and related supporting infrastructure and facilities) was budgeted to cost US \$1.4 billion, and over US \$541 million had been expended on it by July 2009: **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 14.



Former Energy Minister Conrad Enill²⁶

PNM

Minister of Energy and Energy Industries, 2007 to 2010
Minister in the Ministry of Finance, 2001 to 2007

Comments in regard to the 16 June 2009 High Court ruling (Express, 16 June 2009)²⁷

There is no intention on the Government's part to abandon the smelter project. But it will respect the High Court judgment and would look at the application for the Certificate of Environmental Clearance to see if there is any room of improvement, Energy Minister Conrad Enill indicated yesterday.

"There are those who say that democracy does not work. It is very clear that democracy is working. It is very clear that if people believe that their rights have not been dealt with in a particular way, they have recourse; and the Government would stand by whatever that judgment (of the court) is. But the Government is also prepared in the interest of the people of Trinidad and Tobago to do whatever it considers necessary for the long-term survival of our people. And at this point in time, we believe that getting into this particular (smelter) business is appropriate. And that is what we would seek to do," Enill said.

Pointing out that he had not yet been apprised of the details of the judgment, Enill said the CEC process was one over which the Environmental Management Authority (EMA) had control and if it was granted then *"technically it should stand"*. *"So I would like to understand what were the issues (raised in the judgment) and we would address them,"* he said.

Enill said when Government took the decision to establish the smelter plant, it was done on the basis that there were no health or safety challenges. *"So if it is that there is an issue now, we would simply look at it and if we have to reapply (for the CEC) we would so do,"* he said, adding: *"It is our intention to ensure that the project is built."*

[Following the above, the Express continued to report on the remarks made by the then Environment Minister, Dr Emily Gaynor Dick-Forde²⁸:

Planning and Environment Minister Dr. Emily Gaynor Dick-Forde said she was advised that the rigorous exercise through which the EMA had put this matter was flawless. She said she was satisfied that the EMA did an *"overly thorough job"* and was confident the plant would come to fruition.]

²⁶ C-0556, Parliamentary biography of Conrad Enill (consolidated).

²⁷ C-0184, ...Enill: Govt won't abandon smelter project, Trinidad and Tobago Express, 16 June 2009.

²⁸ C-0558, Parliamentary biography of Dr Emily Gaynor Dick-Forde (consolidated).

Announcement of CEC reapplication (Express, 16 September 2009)²⁹

The stalled Alutrint smelter project is expected to get a kick start soon, Minister of Energy and Energy Industries, Conrad Enill, said yesterday.

Enill made the announcement soon after the launch of an Alutrint brochure at the Hyatt Regency hotel in Port of Spain. Works on the controversial aluminium smelter plant, located in La Brea, was halted in June after a court judgment quashed the Certificate of Environmental Clearance (CEC) previously granted by the Environmental Management Authority (EMA).

“We are going back to the EMA as suggested,” Enill said yesterday, adding that the process of reapplying for a new CEC was *“going on now”*.

He said Government had addressed the questions previously raised after the consultation with the people of La Brea, including the disposal of spent pot lining (a byproduct of aluminium production).

One-on-one interview with Guardian Journalist Anthony Wilson on 16 September 2009 (Guardian, 22 October 2009)³⁰

“AW: Among the issues that have been raised by those who are opposed to the smelter is the issue of the economic viability of the Alutrint smelter project. Is it viable?

CE: The Government took the decision that we would enter into the industry and therefore in the long term it would be viable on the same basis that the Point Lisas development project is viable.

Any industry that we are getting into for the first time would require us to put into that industry a development-type input. This would be the same. But if you look globally and in the long term, the smelter would be economic.

AW: Based at what price of product?

CE: The planners of the smelter project did a number of different scenarios and the model that is going forward, both in terms of power costs and in terms of how we propose to set up the marketing arrangements, takes that into account. The details of these are available but I don't keep that in my head.

AW: What's the price of natural gas that, it is proposed, will be converted into electricity to run the smelter?

CE: I think there are two issues. The first issue is that we put a price that meets the requirement but secondly, there is an escalation clause in the contract such that if the commercial price goes up, then the cost of natural

²⁹ **C-0207**, K. Subero, *Going back to EMA: Minister vows to get smelter project up and running soon*, Trinidad and Tobago Express, 16 September 2009.

The CEC reapplication signified a "belt and braces" approach, further to the EMA's already-filed appeal against the High Court ruling to reinstate the original CEC, so as to ensure the recommencement of smelter construction. In respect of the EMA's appeal in July 2009, see **C-0192**, *EMA appeals judge's Alutrint CEC decision*, Trinidad and Tobago Guardian, 7 July 2009:

A release issued yesterday by the EMA said, *“The EMA through a notice filed on July 6, has appealed against the decision by [the High Court to quash the decision by] the EMA to grant a CEC to Alutrint for construction of an aluminium smelter in La Brea.”* The EMA said it was acting independently on behalf of the public by *“balancing environmental considerations with economic ones.”* It defended its decision to *“grant the CEC after thorough and qualified review over a period of more than two years, involving consultation with the public.”* The EMA further stated that it was satisfied it had discharged its statutory duties, took appropriate precautionary measures to prevent serious and irreversible damage to the environment, and *“the learned judge erred in reaching her conclusions.”*

³⁰ **C-0212**, A. Wilson, *Alutrint profitable in five years*, Trinidad and Tobago Guardian, 22 October 2009.

gas to the project goes up as well. Therefore, there is not going to be the expectation of any subsidy on the natural gas.

AW: How soon do you expect the project to be profitable as opposed to viable?

CE: It will depend. Right now, you would recognize that we are going through a series of challenges as it relates to the implementation of the project. Clearly that is going to create some cost pressures that would have to be factored in. But, by and large as most government projects go, this should be profitable in five or six years.”

**Alutrint
profitable in
five to six years**

[Following the above, the Guardian continued to report on the interview with the then Alutrint CEO, Philip Julien, on the same day, which furthered the discussions on the viability and profitability of the smelter project:

“**AW:** One of the big issues for me is the issue of whether the smelter is going to be viable. And, even more to the point, whether it is going to be profitable. I would imagine that viability and profitability depend on the price of natural gas and alumina as well as the price that the final products can fetch. What can you say that would assure the reading public that Alutrint is going to be viable and eventually profitable?

PJ: Without going into details, I would like to answer that with some analogies.

We know of numerous smelters in China with similar equipment and technology to us, yet which have a much higher operating cost than us because their electricity is fuelled by coal and ours by natural gas. Yet those Chinese smelters are still able to be profitable at today’s depressed prices. There are smelters in the western world built at a much higher capital cost than Alutrint will be built. Alutrint is being built at a lower capital cost than most of the recent smelters in the western world because of the advantage of working with a Chinese design, technology and the very attractive debt financing.

**Much lower
capital cost
and operating
cost than most
other smelters**

So we have very attractive financing, an economically priced smelter and the country has natural gas—which is one of the more competitive raw materials for the operating cost of the smelter because power is about 30 to 35 percent of your operating cost.

So just intuitively, from a layman’s perspective, and taking into account that the aluminium industry is cyclical, it allowed the Government to predict a conservative value when doing the overall economics of the smelter to ensure that we can ride out this cyclical storm and more importantly, play to our strength of a competitive price of power—without giving away the farm—which will place us in the lowest quartile in terms of operating cost.

**Chinese design,
technology,
and financing
provided the
distinct
advantage**

AW: At today’s price of aluminium, would Alutrint be profitable?

PJ: I’m not at liberty to say what the LME price was based at. But over the course of the last four years that Alutrint has been in existence, I have never had a burning concern about whether the project would be, ultimately, viable and profitable.

[...]

AW: So what you are saying is that the viability of the project does not depend on an astronomical price?

PJ: No, never. Not at all. The beauty of the Alutrint project is the financing coming from China which allows us to have the robustness which ensures viability at a very management [sic] LME price.”]

Address at the signing ceremony of the Alutrint/Votorantim Project Agreement on 4 December 2009³¹

“The Government is pursuing objectives to expand the economy and to produce value in projects beyond simply the generation and sale of primary products; and the establishment of our Integrated Aluminium Complex meets this requirement.

[...]

[T]he Feasibility Study concluded that the Alutrint Project is technically feasible, economically viable, and environmentally compliant.

An Environmental Impact Assessment Study (EIA) was commissioned by Alutrint in July 2005. A copy was submitted to the EMA in January 2006, and the submissions are available for public review. The essential conclusions of the EIA are:

- All potential major impacts of the Project will be mitigated at the design engineering stage through the application of best available pollution prevention and control technology (BACT) that meets the US/EPA, World Bank, WHO, and local Standards and guidelines.
- There are positive benefits of the project to the local and national communities.
- The Project can achieve a sustainable balance between built development, people, and the environment.
- The China-based technology to be used in the smelter is deemed to be compliant with all relevant environmental regulations and guidelines.

[...]

Alutrint has signed a Technical Agreement with The China National Machinery & Equipment Import & Export Corporation (CMEC), for the provision of the design and engineering of the smelter component of the project. China has significant experience in aluminium smelting and is now the world leader in primary aluminium production [...]

This project also brings a range of benefits to Trinidad and Tobago including:

- Development of an area of the country that needs support
- Technology and Knowledge Transfer into Trinidad from China (smelter)
- Direct employment – over 800
- Indirect employment – over 2000 – in areas such as ports, transportation, machine, fabrication and motor shops, guard services and others
- Increase in foreign exchange earnings as a result of export of downstream product with added-value
- Expectation of taxes on profits – no tax holiday
- A chance for private enterprise down-stream projects – 5,000 tons of aluminium per year to be sold to local entrepreneurs
- Development of the technical skills of citizens of Trinidad and Tobago through extensive training programs, at similar facilities abroad and locally, utilizing existing technical schools and training programs, along with on the job training.

**Technically
feasible,
economically
viable, and
environmentally
compliant**

³¹ **C-0219**, Address by Senator the Honourable Conrad Enill, Minister of Energy and Energy Industries, at the Signing Ceremony of the Alutrint/Votorantim Project Agreement on 4 December 2009.

- Establish Trinidad & Tobago as an important transformation centre for aluminum.
- Opportunity for Trinidad and Tobago to develop skills and technology in the aluminium conversion industry
- Give benefits to Trinidad and Tobago from more than \$300M/yr of high tech and high value added exports.
- Potential for Trinidad to become involved in the marketing component of the aluminium downstream products.
- Potential for Trinidad to bring value to CARICOM, by the opportunity for trade of raw material from one country (e.g. Alumina from Jamaica) for finished product from another (aluminium from Trinidad)

[...]

The financial evaluation of the project as has been stated before was based on:

- An investment cost of US\$540,000, inclusive of the cost of the smelter of US\$440,000 and ancillary costs of US\$100,000
- A capacity of 125,000 metric tonnes per annum
- Revenue based on sales of primary products
- Favourable loan financing
- Competitively priced inputs such as alumina and power

Given the above indicators the project shows the following base results:

- A net profit of 20 percent
- An internal rate of 14.20 percent
- A loan repayment period of 8.07 years

The Government has done its due diligence and has determined that the project offers a number of present and future benefits both in terms of revenue generation and in terms of its offerings for the development of new entrepreneurial ventures and a cadre of professionals and technicians with new skill sets.

[...]

We expect that the Alutrint Aluminium Plant will be one of this country's major economic ventures. The partners in this project have indicated that they will place heavy emphasis on the safety of the project employees and minimizing the project's impact on the environment. They have also committed to close collaboration with the local community regarding the construction.”



Former Energy Minister Dr Lenny Saith³²

PNM

Minister in the Office of the Prime Minister, 2007 to 2010

Minister of Trade and Industry, 2008 to 2009

Minister of Energy and Energy Industries, 2006 to 2007

Address at the National Symposium on the Aluminium Industry on 6 December 2006³³

“My intention this morning is to set the stage for the discussions by presenting the Government’s policy framework for the development of an aluminum industry. In doing so, I will outline the origins of the policy, and the anticipated benefits this industry will bring to our nation.

A key element in the proposed aluminum industry in Trinidad and Tobago is the existence of significant reserves of natural gas. In the early years of our energy sector, natural gas was mainly produced in association with normal crude oil production, and those of us who are old enough to remember, most of it was flared; flared at Pointe-a-Pierre; it was burnt; it had no value.

But during the course of the period, we have learnt the importance of natural gas and as it continued to emerge the Government recognized it as the next commercially exploitable hydrocarbon resource capable of generating significant revenue. It was found that the chemical composition of our natural gas made it ideal for use, inter alia, as feedstock for the petrochemical and steel industries and as a clean source of fuel for electricity generation for various types of industry, including large-scale energy intensive industries such as the production of steel and aluminum.

Over the years, the Government has utilized our natural gas in the manufacture of petrochemicals and fertilizers, in electricity generation for iron and steel and more recently in the production of LNG.

The records will show that since the late 1960s, Governments – and I use the word ‘Governments’ – have been giving consideration to the establishment of an aluminum industry in this country. Every decade thereafter saw various administrations either reviewing proposals tabled by companies or commissioning studies on the benefits of the industry to the country. The aluminum industry was seen as one of very significant strategic importance for the diversification of the nation’s economy.

Beginning in the 1970s, the Government reviewed proposals for the establishment of an aluminum smelter in Trinidad and Tobago and held discussions with the Governments of both Guyana and Jamaica on this issue. Policy position was clearly articulated in 1977 at the commissioning of the country’s first iron and steel facility. The country’s first Prime Minister, the late Dr. Eric Eustace Williams, then stated that the thinkers of the day were recommending: ‘that Trinidad and Tobago should just sit back, export our oil, export our gas, do nothing else and just receive the revenues from such exports and lead a life of luxury at least for some time’. His view was that this approach was tantamount to putting the whole nation on the dole. Instead, he saw an excellent opportunity for industrialization, economic diversification and the development of production capacity. And so, he led Trinidad and Tobago to enter, again in his words: ‘the world of steel, aluminum, methanol, fertilizers and other petrochemicals in spite of our small size and limited technology’.

The country has reaped tremendous benefits from that policy position. It was a key factor in the subsequent rapid development of the Point Lisas Industrial Estate with its various gas-based industries and its impressive infrastructure including the improvement of the Port of PLIPDECO. The Government also established the National Gas Company (NGC) and the National Energy

Since the late 1960s, Trinidad and Tobago has been eyeing the aluminium industry, which was considered “of very significant strategic importance for the diversification of the nation’s economy”

³² C-0560, Parliamentary biography of Dr Lenny Saith (consolidated).

³³ C-0112, Transcript of Trinidad and Tobago's National Symposium on the Aluminium Industry on 6 December 2006, pp. 4-9.

Corporation (NEC) to manage the nation’s commercial arrangements for the natural gas sub-sector and to continue the development of the necessary infrastructure. Indeed, it is clear that without this gas-based industrialization strategy, our gas reserves would have remained severely underutilized. Instead, today, our natural gas sub-sector is among the most referenced success stories in the global energy arena.

As you all know, we are now the world’s number one exporter of ammonia and methanol from a single site. We are the largest exporter of LNG to the United States, and we have an increasingly vibrant iron and steel industry.

These industries have undoubtedly brought significant economic benefits to our nation. However, they are not very large employment creators and offer limited opportunity for the establishment of local enterprise and the export of high value added products.

We therefore need to expand our industrial base for the further development of our country. Diversification of the economy is at the heart of all our plans. Through the energy sector, we are promoting the establishment of downstream industries which add value and which will generate economic multiplier effects, through the creation of linkages between the energy sector and the rest of the economy. We are seeking new investments which will both deepen and widen the nation’s productive base and generate new manufacturing activity in Trinidad and Tobago.

[...]

We are now for the first time approaching a very real way, the establishment of an aluminum industry in Trinidad and Tobago.³⁴ This can bring very significant benefits to this country. Globally, the aluminum industry grows on average by 2% a year. This year alone aluminum prices have grown by 16%. Because of its properties, aluminum is used in a wide variety of manufacturing activity from household goods to transportation and pharmaceutical industries. The establishment of an aluminum industry therefore presents excellent prospects for greater industrialization, economic diversification, technology transfer, wealth generation and the creation of sustainable jobs in Trinidad and Tobago. Let me now present, in synopsis, the benefits to be accrued to Trinidad and Tobago from the two proposed smelter plants.

Alutrint: Let us first examine Alutrint. During construction approximately 2, 300 persons will be employed for a period of two (2) years. A permanent workforce of 1,000 will be employed in the operation of the plant and in the downstream activity.

Very significantly, 100% of Alutrint’s output will remain in the country for

“Greater industrialization, economic diversification, technology transfer, wealth generation, and the creation of sustainable jobs”

Alutrint represented the first real opportunity to the establishment of an aluminium industry after decades of attempts

³⁴ It is notable that under the 1995-2001 UNC administration, led by then Prime Minister and UNC political leader Basdeo Panday, Trinidad and Tobago came close to establishing a 474,000 mtpy aluminium smelter to be built by a Norwegian company Norsk Hydro (in respect of which see **C-0060**, *Norsk Hydro Reaches an Agreement To Build Aluminum Plant in Trinidad*, Wall Street Journal, 13 November 1998.

Prime Minister Basdeo Panday, then in wholehearted support of the aluminium industry, delivered the following feature speech at the signing ceremony of the Project Agreement with Norsk Hydro on 12 November 1998:

“It is with great pleasure that I address you today on what for my Government and the country is a most important and an historic occasion. Today heralds a new dawn—the start of what might be considered a new industry with the signing of the Project Agreement for the establishment of an aluminium smelter in Trinidad and Tobago. [...] There are important socio-economic bases for the establishment of a world-scale aluminium smelter in Trinidad and Tobago. There are abundant supplies of some of the world’s best quality bauxite deposits in our sister Caricom nations—Jamaica and Guyana. This factor couples with the fact that Trinidad and Tobago is blessed with adequate supplies of competitively-priced natural gas-based energy from experienced and proven gas supply companies, a well-developed natural gas infrastructure and an experienced workforce. And when these factors are combined with the other enabling factors such as the hospitable investment climate, a stable government and political system, and the favourable geographical location of the country at the gateway to potential markets in the Americas and Europe, it is clear why Norsk Hydro has selected Trinidad and Tobago as the location for its next major

the development of local downstream activity. The Alutrint project will therefore create more employment opportunities than the traditional primary gas processing industries. The intention is that approximately 120,000 tonnes will be utilized for a rod mill plant. Of this amount, 35,000 tonnes will be allocated to an alloy rods and continuous bar plant, 5,500 tonnes to a wire and cable plant and 30,000 tonnes will be allocated to a billets and bars plant. The output of the billet and bars plant will supply 20,000 tonnes to a wheel plant and 10,000 tonnes to an auto parts plant. This approach will generate downstream businesses requiring investment on a scale that would be quite attractive to the local entrepreneur.

Further, the Alutrint project is being undertaken in partnership with international companies with considerable experience in the aluminum industry. The transfer of technology and expertise will be made part of the contractual arrangements. The project involves a collaborative effort between the Government of Trinidad and Tobago and the People's Republic of China for technology design and transfer. Alutrint has signed a Technical Agreement with the China National Machinery and Equipment Import and Export Corporation (CMEC) for the provision of the design and engineering of the smelter component of the project. The design and engineering for the downstream component of the proposed project is being led by Sural, the Venezuelan company, which has 40% equity in Alutrint.

[...]

These two investments by Alutrint and Alcoa will strengthen the industrial base of our country and diminish our vulnerability to the volatility of the international energy markets.”

investment in aluminium smelter facilities. [...] Trinidad and Tobago's 30-year quest to establish a local smelter is finally within our grasp as we sign this Project Agreement for the establishment of an aluminium smelter/power plant. This project will provide sustainable employment opportunities and further aid economic development in this country. [...] At this juncture, I reiterate that an investment in the establishment of an aluminium smelter and related facilities in Trinidad and Tobago will be the country's, and possibly the region's, single largest capital investment. Over a ten-year period, it is estimated that direct investment will be in the order of US\$2.6 billion for the two train smelter and power plants. In addition to the multiplier effects in terms of indirect employment creation, this investment would facilitate the expansion eastwards of the Point Lisas Industrial Estate, an expansion of port and marine infrastructure and the increased sale of natural gas.” (emphases added)

Prime Minister Basdeo Panday's 12 November 1998 feature speech was quoted and reproduced in:

- (a) **C-0097**, Trinidad and Tobago Hansard, 25 August 2006 (39th Sitting – 4th Session – 8th Republican Parliament), pp. 26-29 (internal page reference 114-117), where Dr Keith Rowley highlighted the hypocrisy of the UNC for praising the aluminium smelter initiative while in government and then disowning and criticising it when in opposition (in respect of which see also **C-0099**, C. Chan Tack, *Rowley reveals UNC aluminium industry*, Trinidad and Tobago Newsday, 27 August 2006); and
- (b) **C-0198**, A. Wilson, *Are T&T's environmentalists anti-people?*, Trinidad and Tobago Guardian, 22 July 2009, where the author questions the protests against Alutrint smelter by a few environmentalists in the context of the “*bi-partisan support for aluminium and the diversification of T&T's natural gas-led industrialisation*”.



Former Finance Minister Karen Nunez-Tesheira³⁵

PNM

Minister of Finance, 2007 to 2010
Member for D'Abadie/O'Meara, 2007 to 2010

Budget speech for Fiscal Year 2010 on 7 September 2009³⁶

“The Government’s policy is to deepen the industrialisation process by diversification through gas-based downstream industries aimed at achieving increasing returns along the energy value chain. This builds on the current strategy of the monetisation of gas reserves through primary products such as urea, ammonia and methanol. The Government is pursuing the further development of downstream industries in metals and plastics. In particular a steel plant, a polypropylene plant and an aluminium smelter are the centre of the Government’s strategy.”

**Aluminium
smelter at the
centre of the
Government’s
strategy of
diversification
through gas-
based
downstream
industries**

³⁵ **C-0567**, Parliamentary biography of Karen Nunez-Tesheira (consolidated).

³⁶ **C-0205**, Budget Statement 2010, presented by Senator the Honourable Karen Nunez-Tesheira, Minister of Finance, on 7 September 2009, pp. 12-13.



Former Finance Minister Winston Dookeran³⁷

COP (formerly **UNC**)

Minister of Foreign Affairs, 2012 to 2015

Minister of Finance, 2010 to 2012

Founder and Political Leader of the COP, 2006 to 2011

Member of the UNC, 2002 to 2006

Member for Tunapuna, 2010 to 2015

Member for St. Augustine, 2002 to 2007

Budget speech for Fiscal Year 2011 on 8 September 2010³⁸

“[T]here has been great uncertainty about both the Alutrint and the Rapid Rail projects. There has been much public criticism of these projects rising from legitimate concerns. In addition to the health and environmental risk, there is also serious concern as to Alutrint’s viability and the optimal use of our gas. This project shall cease and an alternative strategy will be put into place for the south-west peninsula.”

Responses to questions about the 8 September 2010 announcement to cease the Alutrint Aluminium Project (Guardian, 14 September 2010)³⁹

Two ministries—Finance and Energy—have been charged with handling the exit costs of Alutrint.

The Government stated its intent to cease the smelter plant during its budget proposal last week Wednesday. Apart from being a campaign promise, the Finance Minister Winston Dookeran said it was not the best use of the country’s natural gas. But stopping the plant comes with legal challenges. Alutrint’s chief executive Philip Julien said there are contractual ramifications which he was not at liberty to disclose. He said the Ministry of Energy has undertaken the exercise to quantify the contracts. For the moment, Alutrint, remains operational. Julien said the company had already completed detailed engineering and the site is prepped for construction. He said the decision by the High Court in June 2009 to nullify the grant of the certificate of environmental clearance impeded construction.

However, Alutrint’s support structure is also in progress: its 750 mega watt power plant should be completed in the first quarter of 2011 and work is still being done on the port at Brighton. Of the 28 people still employed, 13 of them are contract workers from La Brea. *“Alutrint remains committed to serving its shareholders and awaits further directives from them pertaining to the company’s continued operations. Bearing in mind the Government is also the majority shareholder for Alutrint, Government is in the best position to comment further on this matter at this time,”* said Julien.

When questioned about the smelter plant last week, Dookeran said Government would look to pursue other industries in the area earmarked for the plant. He said it was part of a wider development plan for the south west peninsula.

Pushed further to explain why the power plant would be underutilized when it’s completed or the economics of looking for new industries when one was already being pursued, Dookeran said the decision was a campaign promise. He said it was a loss the Government had to accept as well as its legal burden.

In September 2010, Finance Minister Dookeran formally announced the State’s decision to discontinue the Alutrint project. This is, in Dr Rowley’s words, “abandonment by a simple one-line statement in his budget speech”.

Being pressed, Dookeran conceded: “the decision was a campaign promise”

³⁷ C-0574, Parliamentary biography of Winston Dookeran (consolidated).

³⁸ C-0252, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 13 (internal page reference 11).

³⁹ C-0254, A. Javeed, *Stopping smelter comes with legal challenges*, Trinidad and Tobago Guardian, 14 September 2010.



Former Energy Minister Carolyn Seepersad-Bachan⁴⁰

COP (formerly **UNC**)

Minister of Public Administration, 2011 to 2015
Minister of Energy and Energy Affairs, 2010 to 2011
Member of the COP, 2006 to present
Member of the UNC, 2002 to 2006
Member for San Fernando West, 2010 to 2015

Remarks at a press conference at the Congress of the People Operation Centre (Newsday, 15 March 2010)⁴¹

“Furthermore I have deep concerns that Norwegian experts brought to Trinidad and Tobago to so-call clear the air on this Alutrint project.”⁴²

Seepersad-Bachan said she was not convinced by them since it was not Norwegian but Chinese who were involved in the construction of the smelter plant.

“I am not confident they [i.e. the Chinese] can build a plant in accordance with standards.” she said.

“I am not confident the Chinese can build a plant in accordance with the standards.”

Confirmation of the discontinuation of the Alutrint Aluminium Project (Express, 6 July 2010)⁴³

ENERGY Minister Carolyn Seepersad-Bachan confirmed yesterday Government had pulled the plug on the Alutrint aluminium smelter project at the La Brea Industrial Estate.

Speaking with members of the media, following a luncheon hosted by the Energy Chamber at Paria Suites in La Romaine yesterday, the minister said the People’s Partnership had no intention of continuing with the construction of the smelter plant.

[...]

Seepersad-Bachan’s People’s Partnership Government had promised during the general election campaign there would be no smelter.

Yesterday, she said: *“As of May 24, all further construction....stopped.”*

She said no jobs would be lost, and alternative measures would be put in place to accommodate any incurred losses.

She did not outline the measures or how soon they would be implemented.

A foregone conclusion: plug pulled on the smelter even before Cabinet review

Analysis in the Cabinet Note of 16 July 2010,⁴⁴ as revealed in the public domain

“Background

3. [...] In December 2005, Alutrint signed an EPC Contract with CMEC at a cost of US\$275 million for the construction of an Aluminium facility

⁴⁰ C-0554, Parliamentary biography of Carolyn Seepersad-Bachan (consolidated).
⁴¹ C-0226, C. Asson, *COP knocks Govt on alutrint*, Trinidad and Tobago Newsday, 15 March 2010.
⁴² Mrs Carolyn Seepersad-Bachan was commenting on the experience sharing and observations by two veteran Norwegian experts, Dr Bjorn Erik Dahlberg and Jan Yttredal, on modern aluminium smelters: C-0223, I. Arjoon, *Norway expert: Cancer low in smelter towns*, Trinidad and Tobago Newsday, 4 March 2010; C-0225, D. Dickson, *Chinese technology for aluminium smelter*, Trinidad and Tobago Guardian, 10 March 2010.
⁴³ C-0244, *Govt pulls plug on smelter*, Trinidad and Tobago Express, 6 July 2010.
⁴⁴ C-0248, Cabinet Note EEA (2010)10 2nd (Review and Status of Alutrint Smelter Project), dated 16 July 2010.

comprising a 125,000 mtpy smelter with a Carbon/Anode plant. Other facilities associated with the project include a downstream Rod Mill, a Wire & Cable Facility and the port and related material storage and conveyor facilities being undertaken by National Energy Corporation (NEC). In the present revised configuration, in 2008 Alutrint proposed to build only a single pot-line smelter at a revised cost of US\$414 million. The increase in cost was due to the 20% strengthening of the RMB vs US\$, the addition of a state of the art gas treatment [centre] to remove the fluorides, inflation due to shipping and general inflation in the period 2006 to 2008 and scope changes for the electrical power system. The carbon/anode plant was excluded in this configuration.

4. From 2004-2009, GORTT/NGC/NEC financed and implemented the related projects to support and facilitate industrialization expansion of South West Peninsula including the Alutrint smelter. These included the following:

- a) Union Industrial Estate, a 316.6 ha site which was created from disused oil production area which was cut and filled to create level sites. Alutrint will utilize 97.4 ha at an annual lease rental cost of the land at **US\$1.9 million**. National Energy Corporation (NEC) is the owner of the site and the revenue derived therefrom was to be utilized to service the US\$58 million loan advanced by the National Gas Company of Trinidad and Tobago (NGC) to NEC for the development of the site.
- b) Trinidad Generation Unlimited (TGU) power plant, a 720 MW generation facility under construction at an estimated cost of US\$779 million. The plant construction is behind schedule with 46.6% actual vs. 66.5% completion. The forecast for Phase 1a (delivery of 225 MW) has slipped from the original date of 22nd September, 2010 to a forecast date of 22nd December, 2010.

Approximately 70% of the output is committed to T&TEC general system requirements and the balance available to Aluminium smelter. GORTT has guaranteed the obligations of Alutrint and T&TEC to TGU. Alutrint has committed to take 225 MW for a single pot-line on a take or pay basis at 100% utilization factor. The value of this annual commitment by Alutrint is **US\$33 million** for generation/conversion of the natural gas into electricity.

- c) NEC will be expending some US\$60 million on the port expansion, including dredging, at Brighton, La Brea. The port is completed and dredging is currently being undertaken. To date some \$53 million has been expended. NEC has also undertaken the construction of Storage and Conveyor belt facilities at La Brea at an estimated cost of US\$98 million, which is financed by a NGC shareholder loan (US\$82 million) and internally generated funds (US\$16 million). To date US\$47 million has been expended with commitments in hand of US\$16 million.

The foundation of the storage facilities for inputs such as coke and alumina, and aluminium ingots are substantially complete. The storage facilities for the aluminium and the silos for storing the coke have been fabricated but not erected. The conveyor belts from port to silo for the alumina and coke have also been fabricated but not erected. The form for the main silos for the storage of alumina has been made but no further action has been taken. NEC has temporarily suspended work on the project pending a decision on the smelter. Alutrint will be sole user of these facilities and Alutrint has estimated the annual user fee to be a minimum of **US\$9.6 million**. The final fee is still to be negotiated.

[...]

Ownership of the Alutrint plant

5. In April 2005, Alutrint Limited (presently with a staff complement of 28 employees) was incorporated to represent the ownership of the

A series of
supporting
infrastructure
and projects
already largely
completed

Aluminium Smelter facility, namely 60% GORTT (initially via NEC; now Corporation Sole) and 40% Sural (Venezuelan-based Aluminium downstream manufacturer). By 2006 due to financial difficulties, Sural ceased funding the project with the situation that GO[R]TT has made available 93% of the equity funding to Alutrint at a cost of US\$74.1 Million with Sural's contribution of US\$5.6 million. GORTT has also made available US\$17.6 million as a contingent liability to cover the cost of insurance for the loan.

6. The Government proposed to terminate the Unanimous Shareholder Agreement for Sural's breach – failure to contribute in accordance cash drawdown schedule. Sural has contested that a breach had occurred since they were instrumental in introducing Votorantim as an alternate shareholder. This position has not been accepted by GORTT.
7. GORTT recognized that it was critical for the success of the project to have a joint venture partner in this project, one that would provide operating experience and access to markets. In December 2009, a Project Agreement was signed between GORTT and Votorantim Metals of Brazil which is the largest vertically integrated aluminium producer in Brazil and a member of one of the largest privately owned conglomerates in Latin America. Two important conditions precedent to the shareholder agreement are GORTT's commitment to the expansion of the plant from one to two pot lines, (that is from 125,000 to 250,000 tonnes per annum) and the exclusion of Sural as a shareholder. The project agreement with Votorantim terminates automatically on September 30, 2010 if parties fail to execute the Shareholder's and Management agreements.
8. This has led to a situation that GORTT is required to acquire the Sural shares to enable GORTT to execute the JV agreement with Votorantim. GORTT has offered US\$ 4.5 million based on the 7.2% of Alutrint's book value of US\$62 million as of December 2009. This was rejected by Sural who made the counter offer of US\$45 million as representative of the future potential value of Alutrint. GORTT rejected this offer as unrealistic since Alutrint is not an operating entity.

Cost of Energy to Smelter

9. The project agreement with Votorantim provides for a delivered energy cost of 21 mils (1 mil being US\$0.001) when London Metal Exchange (LME) price for Aluminium is less than US\$2100 per tonne and a price of 23 mils when the LME is between US\$ 2100 and US\$3000 per tonne. The energy price increases by 1 mil per incremental US\$100 per tonne in the LME price. In negotiations with Trinidad Generation Unlimited (TGU), it was agreed that the cost of conversion – that is capacity plus energy rate would be 18.03 mils escalated by a 27% of USCPI from December 2007 for the 720 MW of power generated.
10. The gas cost to the smelter is a derived price by subtracting the conversion cost from the selling price of electrical energy to Alutrint. At LME between \$2100 and \$3000 per tonne the cost of electrical energy would be 23 mil. With combined cycle operation and a special conversion cost for smelter set at 16.3 mils, the derived gas price with this pricing structure would be 6.7 mils or US\$0.85 per MMBtu. With the allocation of bpTT's royalty gas to generate electricity for the smelter, if the gas was sold at T&TEC adjusted gas price (US\$ 1.18 plus US\$0.12 transportation tariff per MMBTu), the annual opportunity cost of the natural gas foregone to Alutrint would be **US\$7.4 million**.

Plant Economics.

11. The capital requirement (2008) for this project is US\$566 Million (excluding the US\$24 million for the cast house option and US\$39 million for contingency) of which US\$400 Million will be financed through loan arrangements (concessionary loan and buyers credit loan) from the EXIM Bank of China. The remaining US\$166 Million represents shareholding equity investments.

12. Based on 2010 CRU Aluminium price forecast it is projected that London Metal Exchange (LME) prices would be in the order of US\$2,200 per tonne. When the project was reviewed in 2008 aluminum price were high up in the US\$3,000 per tonne and the then forecast of LME was projected at US\$3,200 per tonne. Based on an LME price of US\$2200 per tonne, the rate of return on equity is in the order of 11.5%, as compared to 22% based on the 2008 LME forecast.

Project Status

13. a) A total of eighteen (18) project related contract agreements have been signed to date as follows:
- i. Memorandum of Understanding - GORTT/People Republic of China
 - ii. Shareholder's Agreement - GORTT/Sural - *GORTT is seeking to terminate agreement with Sural, price is under negotiation*
 - iii. Buyer's Credit Loan Agreement - GORTT/China EXIM Bank
 - iv. Government Concessional Loan Agreement - GORTT/China EXIM Bank - expired at the end of May 2010 and an application has been made to extend the term of the concession for a further 6 months. A response is being awaited.
 - v. Project Agreement - GORTT/Votorantim Metals *expires in September 2010*
 - vi. Import Duty Concession - GORTT/Alutrint
 - vii. Piling & Dynamic Compaction Test Contract - Alutrint/CMEC - *completed*
 - viii. Piling and Dynamic Compaction Agreement - Alutrint/CMEC - *completed*
 - ix. Engineering, Procurement and Construction Agreement (US\$414 million) - Alutrint/CMEC - *potential for claims if project is terminated*
 - x. Technical Specification to EPC Contract (revised) - Alutrint/CMEC
 - xi. Basic Engineering and Equipment Procurement Review Agreement - Alutrint/China Metallurgy Industry Services Co.
 - xii. Certified Verification Agent - Alutrint/ABS Consulting
 - xiii. Chaguanas Office Building Lease - Alutrint/Online Technology
 - xiv. Gas Sales Agreement - Alutrint/National Gas Company of T&T
 - xv. Land Lease Agreement - Alutrint/National Energy Corporation - *Annual lease rent US\$1.9 million*
 - xvi. Dock & Marine User Agreement - Alutrint/National Energy Corporation - *projected annual obligation - US\$9.6 million*
 - xvii. Water Supply Agreement - Alutrint/Water and Sewerage Authority
 - xviii. Power Purchase Agreement - Alutrint/T&TEC/Trinidad Generation Unlimited - *Take or pay obligation of US\$33 million per year*
- b) Construction-related activities to date as permitted by the EMA pending the decision of the Court include the following:
- i. Geotechnical Investigation Program (2006/2007),
 - ii. Dynamic Compaction & Pile Test Programs (2008/2009),
 - iii. Ground Improvement Works (2009),
 - iv. Temporary Facilities including the Temporary Work Camp (2009),
 - v. Contractor's & Owner's Site Offices (2009/2010),
 - vi. Excavation and Backfilling (2010),
 - vii. Temporary Boundary Fence (2010),

Economics:

11.5% return on equity, based on a (low point) LME price of US \$2,200 per tonne

- viii. Concrete Batch Facility (98%) and
- ix. Completion of the Pile Test Program (2010).

To date a total of five (5) shipments containing equipment and material has been received from China.

14. The project has incurred to date expenditure of US\$66.8 million including owner's costs of US\$ 28.6 million for Administration, ESS, communication and project development.

Under the CMEC's EPC contract, Alutrint has contracted US\$442.4 million for the following:

- a) US\$414 million for the EPC contract
- b) US\$ 27 million for dynamic compaction and piling (scope change)
- c) US\$ 1.7 million for miscellaneous works

To date, Alutrint has paid US\$38.2 million as follows:

- a) US\$23.0 million for mobilization and basic engineering
- b) US\$13.8 million for dynamic compaction and piling
- c) US\$ 1.3 million for miscellaneous works piling

To date actual valid claims made by CMEC amount to US\$6.98 million as follows:

- a) US\$3.18 million for Piling progress payment.
- b) US\$ 3.8 million for downtime claim. Between 42 to 178 employees were downtimed over a 42 week period from 18/06/09 due to slowdown of works following High Court action. CMEC has repatriated 200 workers with a skeleton crew on the site.

At present, there is cash in hand of US\$33.6 million earmarked for the following:

- a) payment of the contingent liability of US\$17.6 million to Sinasure, the China Export Credit Agency, for insurance on the Buyers' Credit Loan of US\$300 million.
- b) claims submitted to date of US\$6.98 million
- c) other un-quantified claims associated with the termination of the EPC and loan funding from EXIM Bank of China.

Under the agreement signed between GORTT and Votorantim and in a letter dated June 3, 2010, Votorantim has indicated that there are 3rd party costs of US\$5.7 million for services provided by Hatch for project management oversight and downstream development costs. An additional sum of US\$0.9 million has been spent as owner's cost by Votorantim.

15. Alutrint received its Certificate of Environmental Clearance (CEC1033/2005) on 02 April 2007 for construction-related works. This was subsequently quashed by the High Court on the 16th June 2009. The Court of Appeal Hearing was heard in Oct/Nov 2010 and the court decision is pending for over 7 months.

Termination costs with CMEC

16. The EPC contract with CMEC requires Contract Price – 25% or US\$103 million of the Contract Price to be paid in advance of start of works. US\$36 million was already paid for Design and Engineering. The down payment balance becomes due to CMEC after contract effectiveness. The funds are to be sourced from disbursement of the Concessionary loan from the EXIM Bank of China. However this loan is not effective due to delay relating to the Court's action as it relates [to] the CEC.

Alutrint’s in-house legal opinion has stated that *Alutrint is entitled to terminate the EPC Contract at any time for convenience by giving 28 days notice. Alutrint shall not terminate the contract to execute the works itself or arrange for another contractor to do so. CMEC may be entitled to the following payments:*

- a) *Amounts payable for any work carried out.*
- b) *Cost of Plant and Materials ordered for the works delivered to CMEC, or of [which it] is liable to accept delivery*
- c) *Any other cost or liability which in the circumstances was reasonably incurred in the expectation of completing the work*
- d) *Cost of removal of Temporary Works and contractor’s equipment from the Site and return of items to China*
- e) *Cost of repatriation of CMEC’s workers employed in connection with the works at the date of termination.”*

It is difficult to estimate the total financial exposure to CMEC for early contract termination. With regard to item 16a these costs have been described above and estimated at US\$7 million. With regards to items 16 b&c, this would be a contingent liability. In regard to item 16 d&e, the temporary construction camp could be retained and the cost of return of equipment and repatriation of workers is estimated to be in the order of U\$1 million. Alutrint has been advised that CMEC’s senior management are expected in T&T in early August for discussions.

Further, there may be claims from EXIM Bank of China for the provision of the loan facilities and the Ministry of Finance would provide an estimate of the termination costs.

Gas Utilization

- 16. In Trinidad and Tobago, the total daily natural gas consumption is 4.1 Billion cubic feet per day (2009). The Alutrint smelter will consume 46.5 million cubic feet per day which represent 1.1% of total daily natural gas consumption. This 1.1% includes natural gas consumed by the power plant for Alutrint’s power requirements.⁴⁵
- 17. When compared to other gas based industries, the Aluminium industry presents a favorable investment (in terms of CAPEX) per unit quantity of gas utilized, as well as a high direct employment and industry-competitive return on investment. The Aluminium industry is unique in terms of its potential for expansive downstream industries. Returns on investment normally increase notably with the incorporation of downstream industries.

Health and the Environment

- 18. The modern aluminum industry has proven and demonstrated worldwide to have manageable environmental impacts. The major environmental concern is linked to the use of the older Soderberg technology in which Hydrogen Fluoride (HF) gases are generated in the electrolytic cell. Today’s modern smelter technology uses prebaked anodes which generate less HF gases. The volatilized fluorides and gaseous HF are collected with other gases evolved from the pots by gas-collecting hoods and are passed through large ducts to central gas scrubbers where the fluorides are recovered for reuse in the pots. Alutrint proposes to invest US\$15.5 Million in upgrading to most efficient fluoride scrubbing system worldwide. In addition a further investment of US\$1.0 Million for 55 hectares buffer zone in which there would be planted 100,000 trees/plants. This buffer zone would provide a physical separation between the community housing and the plant and allow for diffusion/dilution of the effluents at a distance from the plant. In addition, the species of plants would act as a bio-indicator to monitor the discharge of the effluents.

Anticipated and acknowledged from the outset that there would be termination costs with CMEC

Gas usage:
1.1% consumption to yield high direct employment and industry-competitive return on investment

Health and environment:
Manageable environmental impacts.
In compliance with all EMA-prescribed standards, including the 1 µg/m³ HF emission limit.

⁴⁵ Numbered paragraph 16 was used twice in the original document.

19. Other gaseous effluents are the PAHs and VOCs that are generated in the manufacture of the carbon anodes. Alutrint has taken the decision to eliminate this manufacturing process and purchase the prebaked anodes.
20. The other waste product generated by Aluminium smelters is the spent pot liners (SPL) which absorb fluorides and cyanide during the smelting process. The concern lies with the possibility that if wet and placed on soil, Fluoride and cyanide may leach into waterways. Traditional disposal methods include Cement Kiln disintegration and specially-designed landfills. Alutrint proposes to mitigate this risk by keeping the SPL dry and either storing in hermetically sealed containers or exported to US to licensed disposal facility. Preliminary discussions with licensed disposal facilities and in-house legal opinion have not identified any impediment to the export of pot liners.
21. In summary, Alutrint has reduced and/or mitigated the environmental risk levels from these effluents and waste products by the provision of the buffer zone, the design of the smelter, use of imported prebaked anodes and export of the spent pot liners. The company attained the environmental standards set by the EMA, including the HF standard on 1 microgram, for the initial proposal for the one pot line. However, with two potlines the company will be unable [to] meet the HF standard of one (1) microgram.⁴⁶ This will jeopardize the project and the proposed joint venture with Votorantim.

Key benefits to Trinidad and Tobago’s development

22. The Aluminium industry offers the following benefits:
- a) Economic Diversification - Contribution of 1% to GDP
 - b) The creation of 700 direct jobs with the potential of 2100 indirect jobs (Community) and 7000 jobs (Downstream)
 - c) Downstream Development - manufacture of final aluminium products for export including wheels and automotive parts fabricated using the prospective SANGS technology.
 - d) Gas Utilization - energy monetization for local business development
 - e) Transfer of Technology - the Chinese Technology is one of the most advanced in the aluminum industry. T&T will benefit from using the most efficient and cleanest technologies in aluminum smelting.
 - f) Infrastructural development - port, road networks, education and health facilities
 - g) Potential Caricom linkages - supply of input material (alumina from bauxite); also markets for Aluminium value added products and

1% gas usage
in return for
1% GDP
contribution

Creation of
thousands of
direct and
indirect jobs

⁴⁶ **This is a major misstatement.** Had the Alutrint project not been abandoned, the expanded smelter in Phase II would have been able to meet the 1 µg/m³ HF emission limit. Pertinent facts include:

- (a) Since the inception of the 125,000 mtpy project in 2005, it was agreed that the plant layout should accommodate a future expansion to 250,000 mtpy: **C-0066**, Minutes of meeting between Alutrint and CMEC on 15 June 2005 in Couva, Trinidad and Tobago (signed 17 June 2005), p. 3 (Item 9:00).
- (b) In October 2006, Alutrint confirmed that the smelter would be constructed in two phases and eventually reach the capacity of 250,000 mtpy: **C-0103**, Minutes of meeting between Alutrint, CMEC and NEUI from 29 September 2006 to 2 October 2006 in Beijing, China (signed 2 October 2006), p. 5 (para. 11).
- (c) Therefore, the engineering design in Phase I, including with respect to the layout and rectifier decisions, has been implemented in a way to ensure that there would be no likely HF impact from the Phase II expansion: **C-0162**, Letter from Alutrint to CMEC (with attachments) dated 20 November 2008.
- (d) Furthermore, the upgraded western Gas Treatment Centres (**GTC**) to be applied in Phase I were already able to achieve 99.6% fluoride removal: **C-0167**, Letter from MOF to China EXIM Bank (with attachment) dated 8 January 2009, p. 11.
- (e) Relevantly, it is notable that the topic of HF emission levels was explored at considerable length in the arbitration hearing concerning the dispute between Sural and GORTT. Mr Renda Butler, former Managing Director of Alutrint, reiterated that by using the western GTC the 250,000 mtpy smelter in Phase II would be well expected to meet the 1 µg/m³ HF emission limit: **C-0383**, ICC Case No. 18799/VRO/AGF/ZF, Hearing Transcripts, Volume 2, 8 September 2014, 169:8-20, 171:15-18, 205:19-23.

- h) International Export Market - leveraging access to external markets through international partners (shareholders) e.g. Latin America and China.
23. The most significant benefits of an aluminium smelter are employment with gross employment income in the order of US\$27 million per year and increased economic activity with annual smelter revenues of US\$275 million assuming an LME price of US\$2,200 per tonne. Based on an Alutrint economic model, the average net annual cash flow is estimated at US\$45 million with corporation tax of US\$11 million per year. The Net Present Value of the net cash flow using a discount factor of 8% over a 30 year project life is estimated at US\$425 million.
24. Smelters are labour intensive relative to other process and manufacturing plants. It is estimated that 700 plus workers would be required to operate this plant. This level of employment is substantiated by the following quotation from a report of the Gulf Aluminium Council *“Producing primary aluminum in the Gulf for export to the rest of the world has then proved to be an effective and economic **alternative way of exporting energy**. At the same time, the established primary smelters have become **excellent employment opportunities for the local population**.”*
25. Further, this high employment potential is substantiated by industry data which reveal that there are about 250 aluminium smelters globally producing over 35 million tons of liquid aluminium in over 40 countries and directly employing about 145,000 workers who work within the smelter plants. That is an average of 540 employees per smelter or 517 employees for a 125,000 tons smelter.

[...]

Summary

36. The Alutrint aluminium smelter can generate significant economic activity in Trinidad and Tobago with the most important being employment (US\$27 million) and general economic activity with annual revenues of US\$275 million based on a forecasted LME price of US\$2,200 per tonne. The NPV at a discount rate of 8% of **the net cash flow is projected at US\$425 million over a 30-year period**. The rate of return on equity for this project is estimated at 11.5%. However, any further development would depend on the decision of the Court of Appeal.
37. Estimated costs for project termination and claims for committed costs are in two categories as follows:
- a) One-time costs
- i) Separation costs for current employees of Alutrint is US\$0.5 million
 - ii) EPC contract with CMEC is a minimum of US\$7.0 million plus contingent liability for cost of plant and materials ordered for the works and other costs which were reasonably incurred in the expectation of completing the work
 - iii) Project agreement with Votorantim – US\$5.7 million
 - iv) JV with Sural – No cost but it could be subject to litigation
 - v) Loan agreement with EXIM Bank of China – estimated costs to be provided by Ministry of Finance
- b) Recurrent annual costs due to contractual obligations entered into by Alutrint as follows:
- i) Land lease to NEC US\$ 1.9 million
 - ii) Electricity purchase obligation to TGU US\$ 33.0 million
 - iii) Rental of Pier and Storage facilities US\$ 9.6 million
- Total costs of obligations **US\$ 44.5 million**

The NPV of these obligations at a discount rate of 8% is **US\$500 million** over a 30-year project life. Table 1 summarizes the financial expenditures and costs related to early termination of the project.

38. Consequent of its responsibility for providing the infrastructural requirements for the Alutrint project, the NEC has financial exposure in the sum of TT\$922 million as follows:
- i) Loan from NGC for development of Union Estate (US\$58 million) TT\$367 million
 - ii) Loan from NGC for establishment of port, storage and handling facilities at La Brea (US\$82 million) TT\$520 million
 - iii) Debt to HDC for construction of houses for Square Deal households US\$5.6 million
39. In overall summary termination of the project will cost as follows as listed in Table 1:
- a) Alutrint and NEC have expended US\$166.8 million to date on the infrastructure and project development **specifically for the Aluminium smelter**. A further sum of US\$18.3 million has been committed including claims submitted by contractors for a total expenditure of US\$185.1 million.
 - b) NEC and TGU have expended an estimated US\$839 million for the power plant and the development of Union industrial estate which will serve Alutrint and other projects such as TGU. With Alutrint project representing about a third of the power and estate usage, the pro-rata expenditure would be US\$277 million and **total expenditure to be US\$461 million**.
 - c) NEC has entered into loan arrangement with the parent company NGC for US\$140 million.
 - d) Alutrint has a one-time financial exposure of a minimum of US\$14.2 million for project termination to employees, CMEC and Votorantim. There are other contingent liabilities which would be known at a later date.
 - e) Alutrint has a recurrent annual contractual obligation of US\$44.5 million to NEC and TGU.
 - f) The Net Present value of recurrent annual contractual obligation to TGU and NEC at 8% discount rate over the 30 year period is US\$500 million. On an undiscounted basis the financial obligation is US\$1335 million.
 - g) GORTT could earn an additional US\$ 7.4 million per year as an opportunity cost if the smelter was charged the same as the T&TEC gas price
40. Government as the majority shareholder in Alutrint could seek to mitigate the financial impact by securing alternate uses for the land in Union Estate, the 225 MW of power, and the port facilities. Examples of alternate uses include world scale glass manufacturing using imported silica sand from Guyana and the potential to use some 240 MW of electrical power at Atlantic LNG. A conversion of the current gas turbines to electrical drivers in three (3) of the LNG trains would conserve in the order of 250 MMcfd of natural gas due to the greater conversion efficiency of the Union Estate power plant as compared to the single cycle gas turbines at Atlantic LNG. However, because of the gestation period for industrial projects there will be at least a 2 to 3 year time lag before this mitigation can take effect.
41. There is a possibility that a downstream industry can be started using imported metal and the SANGS technology for development of downstream aluminium manufacturing and fabrication. However, this would require the cooperation of the technology developer – Sural and also consideration of the cost of access to that technology.
42. In conclusion, a decision for the continuation of the project should be based on factors such as the project economics, opportunity costs of alternative

Costs and liabilities of termination:

US \$461 million
expenditure /
sunk costs
(US \$1.0⁺ bn if
not prorated)

US \$140 million
loan obligations

US \$500 million
quantified
contractual
obligations
(US \$1.3⁺ bn if
not discounted)

More yet-to-be
quantified
contractual and
other contingent
obligations

Cost mitigation
by alternative
use not possible
in at least 2 to 3
years

natural gas utilization, generation of employment opportunities and industrial activities and environmental considerations.”

Interview at the start of a People's Partnership local government election motorcade (Guardian, 23 July 2010)⁴⁷

Energy Minister Carolyn Seepersad-Bachan says there is no reversal of the People's Partnership campaign promise in so far as the aluminium smelter plant at La Brea is concerned. On the campaign trail and even before an election was called, the then Opposition was saying no to the smelter. Present government ministers and senators even joined in the protest to stop the plant from being constructed. Since assuming office, however, Seepersad-Bachan has prepared a position paper to take before the Cabinet to determine the way forward for the controversial plant.

In an interview on Wednesday, at the start of a People's Partnership local government election motorcade in San Fernando, Seepersad-Bachan said the Government had not flip-flopped on the smelter. *“This (the position paper) has nothing to do with going back on our decision.”* She said the Government had to find ways and means to deal with monies already spent on the foundation and supporting structures such as the storage and dock facilities, to see what alternative options were available for their use.

“We have to be able to determine what we are going to do with the alternative industries, what could go into that estate, what we are going to do with the facilities that have been constructed and the issue regarding employment,” Seepersad-Bachan said. *“I have done an analysis of all the projects associated with Alutrint so that the Cabinet can appreciate where we stand in terms of our commitment, contractual obligations and possibly expenditure.”*

“This (the position paper) has nothing to do with going back on our decision.”

That decision having been taken, it was for the Cabinet to “appreciate where we stand in terms of our commitment, contractual obligations and possibly expenditure.”

Oral answers to Dr Rowley's written questions at the 11th Sitting of the 1st Session of the 10th Republican Parliament on 1 October 2010⁴⁸

“1. Dr. Keith Rowley (Diego Martin West) asked the hon. Minister of Energy and Energy Affairs:

- (a) Could the Minister state whether the Government of Trinidad and Tobago has taken or intends to take a decision to stop the Aluminium Smelter Project?
- (b) If the answer is in the affirmative, could the Minister state when was this decision taken and give the details of the decision?
- (c) Could the Minister further state:
 - (i) What contracts and other agreements will be affected by the decision;
 - (ii) The total estimated financial costs to be incurred by the Government as a result of any cessation of the smelter project; and
 - (iii) How the Government proposes to treat with the loss of employment opportunities which will flow from the closure of the project?

The Minister of Energy and Energy Affairs (Hon. Carolyn Seepersad-Bachan): Mr. Speaker, in response to question 1(a), the Government has decided to cease the Alutrint Smelter Project as declared in

⁴⁷ C-0250, Y. Webb, *Energy Minister: No flip-flop on smelter*, Trinidad and Tobago Guardian, 23 July 2010.

⁴⁸ C-0257, Trinidad and Tobago Hansard, 1 October 2010 (11th Sitting – 1st Session – 10th Republican Parliament), pp. 3-8.

the 2011 budget speech delivered in this honourable House on September 08, 2010.

In response to question 1(b), as declared in the budget speech of 2010/2011, the Government will put in place for the south-western peninsula an alternative strategy that will lend to a higher level of jobs created, maximum value for gas utilized, minimal environmental impact and greater opportunities for development of La Brea and environs.

[...]

Hon. C. Seepersad-Bachan: This task of attracting new industries will be delegated to the National Energy Corporation.

The Ministry of Energy and Energy Affairs is in the process of reviewing options for the anchor project for which the current candidates are:

- (a) A propylene to plastics plant with a capital investment of US \$2 billion;
- (b) An integrated complex for the world scale manufacture of glass and photovoltaic cells with a capital investment of US \$2.5 billion. [*Desk thumping*]

These projects have the potential to achieve the following:

- (1) A significantly increased level of local energy service provider activity;
- (2) Thousands of jobs in the project development phase and hundreds of permanent jobs;
- (3) A greater level of diversification in the downstream sector which is in keeping with the Government's determined efforts to extract maximum value for every cubic foot of gas utilized; and
- (4) Aggressive entry for Trinidad and Tobago into the global renewable energy industry currently topping US \$100 billion, that is a US \$0.1 trillion global industry.

In addition, the National Energy Corporation of Trinidad and Tobago Limited is examining the possibility of utilizing the Alutrint dock yard and the location of the Alutrint storage and handling facilities for various projects. The NEC is currently pursuing discussions with a potential investor for the importation of iron ore from Venezuela onto barges for off load and storage and reloading of larger volumes onto deep draft vessels for export, primarily, to China.

There are some 16 contracts and agreements that would be affected by the decision on the future of the company. These contracts are as follows:

- (1) Contracts with foreign entities—The memoranda of understanding between the Government of Trinidad and Tobago and the People's Republic of China: No direct cost impact.
- (2) A shareholders agreement—The Government of Trinidad and Tobago and Sural: The cost impact, if any, unknown.
- (3) The buyer's credit loan agreement—The Government of Trinidad and Tobago and the China Exim Bank: No cost impact.
- (4) Government concessional loan agreement—Government of Trinidad and Tobago and China Exim Bank: No cost impact. Mr. Speaker, it should be noted that this agreement expired at the end of May 2010 and an application was made to extend the term of the concession for a further six months; a response is still awaited.
- (5) Project agreement—Government of Trinidad and Tobago and Votorantim Metals; this expires in September 2010: No direct

financial exposure, other than costs incurred during the period of the project agreement.

- (6) Engineering procurement and construction agreement—Alutrint/CMEC: This contract was signed on December 2005. Firstly, I should state, the contract required that Alutrint pay a mobilization fee of US \$6 million after the approval of the board of directors and the Ministry of Finance, with the balance of the contract sum when certain conditions were satisfied. Let me first state that the sum of US \$6 million has already been paid, but one of these conditions is that Alutrint obtain all approvals, which it is obligated to obtain in Trinidad and Tobago for the implementation of the works, including the Certificate of Environmental Clearance. In view of the decision of the court to squash the CEC, it is the considered view that the contract was not in full effect and full force.
- (7) The technical specification to EPC contract, Alutrint/CMEC: No cost impact.
- (8) Basic engineering and equipment procurement review agreement, Alutrint/China Metallurgy Industry Services Company: The cost impact, if any, at this time, has not been quantified.

The certified verification agent: Alutrint/A[B]S Consulting: no cost impact.

The other agreements with local entities, there is only one such agreement; the Chaguanas office building lease: Alutrint Online Technology Contract. That terminates on February 2011.

Agreements with government or majority state-owned companies, import duty concession, Government of Trinidad and Tobago and Alutrint: no cost impact.

The gas sales agreement, Alutrint and the National Gas Company of Trinidad and Tobago: no cost impact;

Land lease agreement; Alutrint, National Energy Corporation and the Dock and Marine User Agreement, again with Alutrint and National Energy Corporation; these two agreements combined result in an annual cost of TT \$11 million payable by Alutrint, Government-owned to NEC, Government owned.

Water supply agreement: Alutrint and Water and Sewerage Authority: no cost impact.

Power Purchase Agreement, Alutrint, owned by the Government of Trinidad and Tobago, majority, and T&TEC and Trinidad Generation Unlimited, all Government owned, US \$33 million, which is currently under review and can be modified to accommodate an additional user to cover this cost.

In response to question No. 1(c)(ii), with the cessation of this project the financial cost to be incurred by Government is subject to negotiation with the various parties with which there were contracts and agreements. At this time, the largest financial liability of Alutrint would be on an annual basis, TT \$11 million payable to the National Energy Corporation and US \$33 million payable to Trinidad Generation Unlimited, as I indicated earlier.

In the case of the NEC, wholly-owned state enterprise, steps are being taken to defray the annual cost of TT \$11 million through efforts to lease that part of the Union Industrial Estate to potential investors who would value the benefits of locating on an industrial estate site ready for construction with access roads, electrical power, potable water supply, natural gas supply and a 12.8 metre deep-water port with storage facilities.

To this end, the Government is pursuing various options to get a suitable investor. In the case of TGU (Trinidad Generation Unlimited) a majority-owned state enterprise, the Government is examining options for the use of

240 megawatts of electricity that was to be used by Alutrint, thereby absorbing the annual cost of US \$33 million.

Other financial costs relate to payments for work undertaken by CMEC and Votorantim prior to the decision of Government and following due diligence to ascertain the value of these works which had to be paid whether the Alutrint project was continued or terminated. Right now the various contracts with foreign entities are under review by the Ministry of the Attorney General to determine the extent of liabilities, if any, on these contracts.

Mr. Speaker, in response to question No.1(c)(iii), with the decision to terminate the Alutrint Smelter Project, the Government has indicated that it is exploring alternative industries for Union Estate. Among these industries are: the manufacture of inorganic chemicals; plastics; glass manufacture; alternative energy and agro business. The question focuses specifically on a loss of employment opportunities, but after all the rhetoric and all the disingenuous claims from the other side, how many jobs did Alutrint actually create for the people of La Brea and the environs. The answer, Mr. Speaker is none from the Alutrint Smelter. The projects that replace the smelter will not provide a promise of jobs. It will provide actual jobs; permanent jobs; well-paying jobs and actually contribute to the development, not the deterioration of the south-west peninsula. [*Desk thumping*]

[...]

As I indicated before, this is where we, as a People's Partnership Government, will do everything in our power to ensure that the south-west peninsula will develop under a People's Partnership Government. [*Desk thumping*] Mr. Speaker, I thank you.

Dr. Rowley: Thank you, Mr. Speaker. I wonder if the Minister would answer section (b) of the question.

Mr. Speaker: Hon. Minister, do you wish to respond?

Hon. C. Seepersad-Bachan: Mr. Speaker, you know, I think the question was answered; No. 1(b). But for the benefit of the Member, would you like me to repeat? I can always send it to him, Mr. Speaker, but it was answered.

Dr. Rowley: Mr. Speaker, the Minister may not answer the question but I just want to put on record, the question specifically was: when was the decision taken? And I would like an answer to that, if one is available. [*Desk thumping*]

Hon. C. Seepersad-Bachan: Mr. Speaker, as I indicated, that decision was announced in the budget 2010/2011 by the Minister of Finance, and I indicated that in my answer."

Throughout the parliamentary proceedings, no answer forthcoming as to when and why the Government decided to scrap the smelter



Former UNC Chairman Jack Warner⁴⁹

ILP (formerly **UNC**)

Minister of National Security, 2012 to 2013

Minister of Works and Infrastructure, 2011 to 2012

Minister of Works and Transport, 2010 to 2011

Founder and Political Leader of the ILP, 2013 to 2015

Chairman of the UNC, 2007 to 2013

Member for Chaguanas West, 2007 to 2015

Reiteration of position on smelter immediately after the 2010 Trinidad and Tobago General Election (Guardian, 25 May 2010)⁵⁰

Jack Warner, chairman of UNC, said last night that [...]. He also reiterated that the new government would not permit the construction of an aluminum smelter and would not permit a property tax. He stressed that the Government's work would begin today.

⁴⁹ **C-0565**, Parliamentary biography of Jack Warner (consolidated); **C-0400**, *Highlights of Warner's political career*, Trinidad and Tobago Express, 26 May 2015.

⁵⁰ **C-0025**, *Jack: Local govt polls coming*, Trinidad and Tobago Guardian, 25 May 2010.

ANNEX 5

High-Level Government Officials and Other Influential Government Stakeholders
Involved in the Claim Negotiations with CMEC *

Ministers of the People's National Movement (PNM) Government, 2015 to present



Dr Keith Rowley
Prime Minister
2015 to present



Colm Imbert
Finance Minister
2015 to present



Stuart Young
Energy Minister
2021 to present



Nicole Olivierre
Energy Minister
2015 to 2016

Minister in
charge of
CMEC's claim

Ministers of the People's Partnership (PP) Government, 2010 to 2015



Kamla Persad-Bissessar
Prime Minister
2010 to 2015



Dr Roodal Moonilal
Housing Minister
2010 to 2015



Winston Dookeran
Finance Minister
2010 to 2012



Kevin Ramnarine
Energy Minister
2011 to 2015



Larry Howai
Finance Minister
2012 to 2015



Vasant Bharath
Trade Minister
2012 to 2015



Anand Ramlogan
Attorney General
2010 to 2015

Four Ministers in the Inter-Ministerial Committee and Working Team
established by the PP Government to review and settle CMEC's claim

* The list is non-exhaustive.

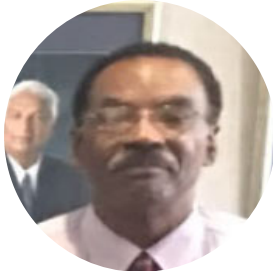
Permanent Secretaries, Advisors, and Other Influential Government Stakeholders



Frank Look Kin
Advisor,
Energy Ministry



Selwyn Lashley
Permanent Secretary,
Energy Ministry



Leroy Mayers
Advisor,
Energy Ministry
(Formerly, Permanent Secretary
2004 to 2012)



Heidi Wong
Deputy Permanent Secretary,
Energy Ministry

Non-minister members of
the PP Government Working Team

Members of the Inter-Ministerial Committee established by
the PNM Government to review and settle CMEC's claim



**Suzette
Taylor-Lee Chee**
Permanent Secretary,
Finance Ministry



**Michelle
Durham-Kissoon**
Permanent Secretary,
Finance Ministry



Maurice Suite
Permanent Secretary,
Finance Ministry
(Currently, Permanent Secretary,
Office of the Prime Minister)



Vishnu Dhanpaul
Permanent Secretary,
Finance Ministry

Head of the PNM
Government
Inter-Ministerial
Committee

(Substituted Mrs Suzette
Taylor-Lee Chee
who initially served as head)



Chandradath Singh
Trinidad and Tobago
Ambassador to China
2014 to 2016



Prof Kenneth Julien
Advisor to Prime Minister
Keith Rowley
The "Energy Tsar" of
Trinidad and Tobago



Sigler Jack
PNM Stalwart
and Campaign Manager



Noel Garcia
Chairman of UDeCOTT
2015 to present

BRIEF BIOGRAPHIES OF INVOLVED MINISTERS AND FORMER MINISTERS

The PNM Government, 2015 to present



Prime Minister Dr Keith Rowley¹

PNM

Prime Minister, 2015 to present
Leader of the Opposition, 2010 to 2015
Political Leader of the PNM, 2010 to present
Member for Diego Martin West, 1992 to present



Finance Minister Colm Imbert²

PNM

Minister of Finance, 2015 to present
Opposition Member, 2010 to 2015
Minister of Works and Transport, 2005 to 2010
Chairman of the PNM, 2018 to 2022
Member for Diego Martin North/East, 1992 to present



Energy Minister Stuart Young³

PNM

Minister of Energy and Energy Industries, 2021 to present
Minister in the Office of the Prime Minister, 2016 to present
Minister of National Security, 2018 to 2021
Minister of Communications, 2018 to 2019
Minister in the Office of the Attorney General and Legal Affairs, 2016 to 2018
Minister in the Ministry of the Attorney General and Legal Affairs, 2015 to 2016
Chairman of the PNM, 2022 to present
Member for Port-of-Spain North/St. Ann's West, 2015 to present



Former Energy Minister Nicole Olivier⁴

PNM

Parliamentary Secretary in the Ministry of Energy and Energy Industries, 2017 to 2020
Minister of Energy and Energy Industries, 2015 to 2016
Member for La Brea, 2015 to 2020

¹ C-0559, Parliamentary biography of Dr Keith Rowley (consolidated); C-0514, Trinidad and Tobago Office of the Prime Minister, *About* → *The Prime Minister*, <https://www.opm.gov.tt/about/prime-minister/> (last accessed 23 May 2024).
² C-0555, Parliamentary biography of Colm Imbert (consolidated); C-0528, Trinidad and Tobago Ministry of Finance, *Our Ministry* → *Executive Team* → *Minister of Finance*, <https://www.finance.gov.tt/our-people/minister-of-finance/> (last accessed 22 September 2024).
³ C-0572, Parliamentary biography of Stuart Young (consolidated); C-0510, Trinidad and Tobago Minister of Energy and Energy Industries, *About Us* → *The Organisation* → *Minister of Energy and Energy Industries*, <https://www.energy.gov.tt/minister-of-energy-and-energy-industries/> (last accessed 23 May 2024).
⁴ C-0570, Parliamentary biography of Nicole Olivier (consolidated).

The People's Partnership Government, 2010 to 2015
Coalition of UNC, COP, TOP, MSJ, and NJAC



UNC Political Leader and Former Prime Minister Kamla Persad-Bissessar⁵

UNC

Prime Minister, 2010 to 2015
Leader of the Opposition, 2006 to 2007, 2010, 2015 to present
Political Leader of the UNC, 2010 to present
Member for Siparia, 1995 to present



UNC Deputy Political Leader and Former Housing Minister Dr Roodal Moonilal⁶

UNC

Minister of Housing and Urban Development, 2013 to 2015
Minister of Housing, Land and Marine Affairs, 2012 to 2013
Minister of Housing and the Environment, 2010 to 2012
Leader of Government Business, 2010 to 2015
Deputy Political Leader of the UNC, 2012 to 2015, 2022 to present
Member for Oropouche East, 2007 to present
Member for Oropouche, 2002 to 2007



Former Finance Minister Winston Dookeran⁷

COP (formerly UNC)

Minister of Foreign Affairs, 2012 to 2015
Minister of Finance, 2010 to 2012
Founder and Political Leader of the COP, 2006 to 2011
Member of the UNC, 2002 to 2006
Member for Tunapuna, 2010 to 2015
Member for St. Augustine, 2002 to 2007



Former Energy Minister Kevin Ramnarine⁸

UNC

Minister of Energy and Energy Affairs, 2011 to 2015
Parliamentary Secretary in the Ministry of Energy and Energy Affairs, 2010 to 2011



Former Finance Minister Larry Howai⁹

UNC

Minister of Finance and the Economy, 2012 to 2015

⁵ C-0566, Parliamentary biography of Kamla Persad-Bissessar (consolidated); C-0526, UNC Portfolio – Political Leader – Kamla Persad-Bissessar, SC, MP, <https://unctt.org/portfolio/political-leader/> (last accessed 14 September 2024).
⁶ C-0561, Parliamentary biography of Dr Roodal Moonilal (consolidated); C-0527, UNC Portfolio – Deputy Political Leader – Dr. Roodal Moonilal, <https://unctt.org/portfolio/deputy-political-leader-2/> (last accessed 14 September 2024).
⁷ C-0574, Parliamentary biography of Winston Dookeran (consolidated).
⁸ C-0568, Parliamentary biography of Kevin Ramnarine (consolidated).
⁹ C-0569, Parliamentary biography of Larry Howai (consolidated).



Former Trade Minister Vasant Bharath¹⁰
UNC

Minister of Trade, Industry, Investment and Communications, 2014 to 2015
Minister of Trade, Industry and Investment, 2012 to 2014
Minister in the Ministry of Finance and the Economy, 2012 to 2014
Minister of Food Production, Land and Marine Affairs, 2010 to 2012
Member for St. Augustine, 2007 to 2010



Former Attorney General Anand Ramlogan¹¹
UNC

Attorney General, 2010 to 2015

¹⁰ C-0573, Parliamentary biography of Vasant Bharath (consolidated).
¹¹ C-0551, Parliamentary biography of Anand Ramlogan (consolidated).

ANNEX 6

Overview of the CECs Relevant to the Project¹

#	CEC reference number	Applicant	Date application received by EMA	Date CEC issued by EMA	Approved activities	Whether EIA required
1.	CEC 0394/2003	NGC	17 February 2003	24 March 2004	CEC for site preparation The development and expansion of an industrial estate at Union, La Brea.	Yes
2.	CEC 1033/2005	NEC	25 April 2005	2 April 2007 (transferred from NEC to Alutrint on 12 March 2008) ²	CEC for smelter – main CEC in the Project The establishment of an aluminium smelter complex with a target capacity of 125,000 metric tonnes per annum (i.e. permanent construction).	Yes
3.	CEC 1346/2006	NEC	2 February 2006	26 June 2006	CEC for site preparation The expansion of the industrial estate at Union, La Brea: development of land to obtain additional space for the layout of the aluminium complex.	No
4.	CEC 1516/2006	NEC	22 June 2006	12 June 2008 (as amended on 5 December 2008)	CEC for port facilities The construction of docking facilities for cargo vessels and reclaiming land for cargo storage.	Yes
5.	CEC 1982/2007	NEC	31 July 2007	30 January 2009 (transferred from NEC to Alutrint on 7 April 2009)	CEC for temporary work camp The erection of a temporary work camp consisting of five districts to accommodate approximately 800 workers for the construction of the Alutrint aluminium smelter complex.	No
6.	CEC 2085/2007	Alutrint	24 October 2007	15 October 2008 (transferred from Alutrint to TGU on 15 January 2009)	CEC for power plant The construction and operation of a 720 MW combined cycle air cooled power generation plant.	Yes

¹ Except where otherwise indicated, this table is prepared based on the following EMA published or issued documents: **C-0595**, "CEC Summary" published online by the EMA (consolidated); **C-0596**, "EIA Summary" published online by the EMA (consolidated); **C-0063**, CEC 0394/2003 dated 24 March 2004; **C-0017**, CEC 1033/2005 dated 2 April 2007; **C-0091**, CEC 1346/2006 dated 26 June 2006; and **C-0169**, CEC 1982/2007 dated 30 January 2009.

² **C-0193**, TTCA Civil Appeal No. 155 of 2009, Affidavit of Leroy Mayers dated 7 July 2009, para. 7.

ANNEX 7

Chronology on CEC 1033/2005

for the Construction of an Aluminium Smelter

This chronology outlines events related to CEC 1033/2005, the local environmental permit for the construction of an aluminium smelter at Union Industrial Estate, La Brea, Trinidad and Tobago. The obtaining of CEC 1033/2005 was a condition for the EPC Contracts to come into full force and effect.¹

The events captured include, among others: (a) the application process with the EMA; (b) the judicial review process with the High Court; (c) the appeal process with the Court of Appeal; and (d) the withdrawal of appeal after the change of government. Where relevant, statements made by Alutrint, the EMA and Government Ministers are also included to provide additional context.

This is a topic-focused chronology and is not exhaustive of all events relevant to this arbitration. CMEC reserves the right to amend and supplement this chronology.

#	Date	Event	Reference
1.	22 April 2005	NEC filed the CEC application for a 125,000 mtpy aluminium smelter (i.e. CEC 1033/2005).	Exhibit C-0369 , para. 27
2.	25 April 2005	The EMA received the CEC application.	Exhibit C-0595 , p. 3
3.	19 August 2005	The EMA issued the final Terms of Reference, which served as a guide for the conduct of the Environmental Impact Assessment (EIA) and the preparation of an EIA report.	Exhibit C-0067
4.	24 August 2005 to 14 November 2005	Alutrint conducted a series of stakeholder and public consultation meetings, including a first public consultation meeting on 9 November 2005 and a second public consultation meeting on 14 November 2005.	Exhibit C-0068
5.	12 December 2005	Alutrint completed the Qualitative Risk Assessment.	Exhibit C-0076
6.	January 2006	Alutrint completed the EIA report. The EIA report comprised three volumes: the Environmental Impact Statement, the Social Impact Assessment, and the Air Dispersion Modelling Report.	Exhibit C-0077
7.	2 February 2006	NEC submitted the EIA report to the EMA.	Exhibit C-0018 , p. 18 (para. 14)
8.	13 March 2006 to 28 April 2006	The EMA invited public comments on the EIA report.	Exhibit C-0082
9.	Mid-May 2006	The EMA conducted site visits to similar smelters in China with the assistance of CMEC.	Exhibit C-0120 , p. 5 Exhibit C-0473 , p. 2
10.	29 May 2006	The EMA forwarded the Review and Assessment Report to NEC, which provided a statement of deficiencies and general comments gathered from the review process of the EIA report. The EMA informed NEC that the CEC application would not be determined unless the deficiencies identified in the Review and Assessment Report were addressed.	Exhibit C-0018 , pp. 20-21 (paras. 21-24)
11.	18 August 2006	NEC/Alutrint submitted the Supplementary Report, which responded to the EMA's comments in the Review and Assessment Report.	Exhibit C-0092 Exhibit C-0018 , pp. 22 (paras. 31)

¹ **C-0011**, 2005 EPC Contract dated 20 December 2005, p. 3 (Contract Agreement, condition (e)); **C-0015**, 2008 EPC Contract dated 30 October 2008, p. 2 (Contract Agreement, Clause 6.1).

#	Date	Event	Reference
		The EMA acknowledged receipt and indicated that the CEC application would be determined by 17 October 2006.	
12.	11 September 2006 to 10 October 2006	The EMA invited public comments on the Supplementary Report.	Exhibit C-0101
13.	17 October 2006	The EMA forwarded the "Review Comments on the Supplementary Report" to NEC, and requested that NEC additionally (i) conduct a Human Health and Ecological Risk Assessment (HHERA) and (ii) develop a plan for the conduct of public consultation meetings. This marked the second occasion on which the EMA declined to determine the CEC application, returning it to NEC for further processing.	Exhibit C-0018 , p. 24 (paras. 38-41)
14.	20 November 2006	Alutrinc by letter protested the EMA's two additional requests, noting the "<i>late timing</i>" and "<i>unreasonable justification</i>". Nonetheless, Alutrinc agreed to undertake the performance of the HHERA and additional public presentations to the Project-affected community of La Brea.	Exhibit C-0018 , p. 27 (para. 50)
15.	23 November 2006	Alutrinc submitted the "Addendum to the Supplementary Report", which responded to the EMA's "Review Comments on the Supplementary Report".	Exhibit C-0111 Exhibit C-0018 , p. 27 (para. 51)
16.	7 December 2006	Alutrinc held the first public update meeting in La Brea and submitted a transcript of the proceedings to the EMA.	Exhibit C-0018 , p. 27 (para. 53), pp. 28-29 (para. 56)
17.	14 December 2006	Alutrinc held an open house at Union Communications Centre, La Brea.	Exhibit C-0018 , p. 29 (para. 56)
18.	19 December 2006	Alutrinc held a cottage meeting for fence line communities.	Exhibit C-0018 , p. 29 (para. 56)
19.	11 January 2007	Alutrinc submitted the "Public Update Strategy and Implementation Report", which summarised the methodologies / strategies it had adopted to perform the public update exercise as requested by the EMA.	Exhibit C-0018 , pp. 28-29 (paras. 55-56)
20.	30 January 2007	The EMA sent to Alutrinc a document titled "Interim Addendum Review Report", in which the EMA provided its preliminary review findings on Alutrinc's 23 November 2006 "Addendum to the Supplementary Report" and 11 January 2007 "Public Update Strategy and Implementation Report".	Exhibit C-0018 , p. 29 (para. 57)
21.	12 February 2007	Alutrinc held the second public update meeting in La Brea to present the HHERA to the community.	Exhibit C-0018 , pp. 29-30 (para. 58)
22.	14 February 2007	Alutrinc submitted the HHERA to the EMA, which indicated that there were no likely health or ecological effects on the people, plants, fish and wildlife in the surrounding community of La Brea. The evaluation in the HHERA encompassed " <i>the substances emitted to the air from the proposed aluminium complex as well as the cumulative effects of the aluminium complex as well as the power plant and UAN [urea ammonium nitrate] facility</i> ".	Exhibit C-0119 , p. 12 Exhibit C-0018 , p. 30 (para. 59) Exhibit C-0120 , pp. 3, 6

#	Date	Event	Reference
		Around the same time, Alutrint also responded to the EMA's 30 January 2007 "Interim Addendum Review Report" and submitted a supplement / update to its 11 January 2007 "Public Update Strategy and Implementation Report".	
23.	22 February 2007	Alutrint wrote to the EMA summarising the main communications and correspondences between Alutrint and the EMA since April 2005. In the letter, Alutrint highlighted that the Project undertook several firsts in many aspects of environmental and societal stewardship, including: <i>"The Alutrint project is the first to undertake a HHERA in Trinidad and Tobago.</i> <i>Alutrint is the first company to undertake a <u>cumulative</u> air dispersion model, and corresponding HHERA. [...]</i> <i>Alutrint is the first Trinidad energy sector company to perform extensive redesign at significant cost (USD Millions) to conform to unlegislated draft air pollution rules.</i> [...] <i>Alutrint is one of the first aluminum facilities worldwide to agree with the conformance to the most stringent HF fenceline limitation of 1 µg/m³ on a 24 hour basis [...]</i> <i>Alutrint is the first energy sector company to voluntarily commit to fenceline monitoring to occur <u>prior to</u> (and during) operation of our facility.</i> <i>Alutrint is one of the first corporate entities to establish a presence in the project affected community – La Brea – at least eighteen (18) months before construction commences.</i> <i>Alutrint is one of the first energy companies in Trinidad to undertake additional formal public meetings, one (1) year after the mandatory EIA public consultations. [...]"</i> (emphases in the original) In closing, Alutrint noted that the "<i>project schedule and budget [were] already compromised</i>" as a result of "<i>nearly two (2) years of the application, evaluation and clarification process</i>", and urged the EMA to make an informed and expeditious decision on the future of the Project.	Exhibit C-0120
24.	9 March 2007	The EMA forwarded the "Review of the Human Health and Ecological Risk Assessment" to Alutrint.	Exhibit C-0018, p. 31 (para. 63)
25.	12 March 2007	Alutrint responded to the EMA's review of the HHERA by a document titled "Responses to the Review of the Human Health and Ecological Risk Assessment".	Exhibit C-0121 Exhibit C-0018, p. 31 (para. 64)
26.	21 March 2007	The EMA requested an update on the disposal of the Spent Pot Lining (SPL), a hazardous by-product in aluminium smelting, in response to which Alutrint provided a confidential letter of intent dated 21 April 2007 (after the grant of the CEC).	Exhibit C-0018, p. 32 (para. 67)
27.	28 March 2007	Alutrint submitted a document titled "<i>Report on the Cumulative Assessment of the impacts of the Alutrint Union Estate project in conjunction with those of the proposed Marine Port at Brighton, La Brea</i>". This document summarised the facts demonstrating that there would be no significant incremental environmental impact by	Exhibit C-0122 Exhibit C-0018, p. 65 (last paragraph)

#	Date	Event	Reference
		the port and conveyor facilities (with comprehensive review to be set out in the EIA report for CEC 1516/2006) that would affect the cumulative impact assessment conclusions in the application for CEC 1033/2005.	
28.	2 April 2007	The EMA granted CEC 1033/2005 to NEC, subject to stated conditions, for "[t]he Establishment of an Aluminium Smelter Complex with a target capacity of 125,000 metric tonnes per annum" at Union Industrial Estate, La Brea.	Exhibit C-0017 Exhibit C-0018 , pp. 32-33 (para. 68)
29.	29 June 2007	Three public interest groups simultaneously filed applications (with suit numbers CV 2007-02257, CV 2007-02263 and CV 2007-02272) before the High Court of Trinidad and Tobago for leave to apply for judicial review of the EMA's decision to grant CEC 1033/2005.	Exhibit C-0018 , pp. 4-5 (paras. 1, 6) Exhibit C-0019 , p. 3 (para. 1), p. 4 ("Procedural History" paragraph)
30.	13 September 2007	The Honourable Justice Jamadar, a. granted leave to all the intended claimants to proceed with judicial review; b. granted special leave to the Attorney General to participate in the actions; and c. directed further that "[t]he EMA be named as the Defendant herein and Alutrint Limited and the National Energy Corporation be named as the Interested Parties". As from 13 September 2007, the three actions were heard together notwithstanding that no order for consolidation was made.	Exhibit C-0018 , pp. 5-6 (paras. 7-10)
31.	12 March 2008	NEC transferred CEC 1033/2005 to Alutrint.	Exhibit C-0193 , para. 7
32.	6 October 2008 to 1 December 2008	Oral submissions were heard before Madame Justice Mira Dean-Armorer.	Exhibit C-0021 , p. 1 Exhibit C-0193 , para. 7
33.	16 June 2009	The High Court of Trinidad and Tobago rendered a decision to quash the grant of CEC 1033/2005 and remitted the matter to the EMA for further consideration (High Court Decision). The High Court Decision was based on the findings of: a. inadequate public consultations (p. 185, para. 64); b. improper deferral of the SPL disposal plan until after the CEC issuance (p. 196, para. 109); and c. insufficient consideration of the cumulative impact of three related parts of the overall Project, namely, the aluminium complex, the power plant, and the port facility (p. 199, para. 118).	Exhibit C-0018
34.	6 July 2009	The EMA filed a notice of appeal against the High Court Decision. The appeal was filed with the Court of Appeal of Trinidad and Tobago, docketed as Civil Appeal No. 155 of 2009 (Appeal Action).	Exhibit C-0192 Exhibit C-0193 , p. 1

#	Date	Event	Reference
35.	6 July 2009	The EMA issued a release confirming that it had filed the Appeal Action. The EMA defended its decision to <i>"grant the CEC after thorough and qualified review over a period of more than two years, involving consultation with the public"</i>. The EMA said it was acting independently on behalf of the public by <i>"balancing environmental considerations with economic ones"</i>. The EMA further stated that it was satisfied that it had discharged its statutory duties and taken appropriate precautionary measures to prevent serious and irreversible damage to the environment, and that <i>"the learned judge erred in reaching her conclusions"</i>.	Exhibit C-0192
36.	7 July 2009	Alutrint filed a notice of application to join the Appeal Action as an interested party.	Exhibit C-0381 , para. 221
37.	7 July 2009	Mr Leroy Mayers, Permanent Secretary of the MEEI and Chairman of Alutrint, filed an Affidavit in the Appeal Action on behalf of Alutrint as the interested party. Mr Leroy Mayers testified that the overall Project (i.e. the aluminium smelter and related support projects) was budgeted to cost US \$1.4 billion and over US \$541 million had been expended as of the date of his Affidavit (para. 14).	Exhibit C-0193
38.	7 July 2009 (date reported in media)	Prime Minister Patrick Manning, in commenting on the High Court Decision, said that <i>"[t]he court had objected to the process under which the CEC was granted and not to the smelter plant itself. The courts did not object to the smelter, the courts just said the process needed to be beefed up in a certain area and that's what we are seeking to do now"</i>. Manning further stated the EMA was moving as fast as possible to ensure that <i>"if a CEC is granted in the future, it is in accordance with all the procedure and to obtain the satisfaction of the court"</i>.	Exhibit C-0191
39.	13 July 2009 (date reported in media)	The Court of Appeal of Trinidad and Tobago, at the request of the EMA, agreed that the Appeal Action be deemed urgent, and that the hearing be expedited and be fixed on a date in September 2009. Further, it ordered that the Attorney General be made a party to the Appeal Action.	Exhibit C-0194
40.	7 August 2009	The High Court of Trinidad and Tobago delivered the full written judgment in CV 2007-02272 (in addition to the full written judgment in CV 2007-02263 which was rendered on 16 June 2009).	Exhibit C-0019
41.	16 September 2009 (date reported in media)	Energy Minister Conrad Enill announced after the launch of an Alutrint brochure that <i>"[w]e are going back to the EMA as suggested"</i>, adding that the process of reapplying for a new CEC was <i>"going on now"</i>. In particular, Enill assured that the Government had addressed the questions previously raised after the consultation with the La Brea community, including the disposal of SPL.	Exhibit C-0207
42.	September 2009 to November 2009	The hearing in the Appeal Action took place in three tranches in September, October, and November 2009 (11 days in total). At the conclusion of the hearing, Chief Justice Ivor Archie commended the appeal as <i>"one of the best argued cases"</i> and	Exhibit C-0368 , para. 56

#	Date	Event	Reference
		said that the judgment, while reserved, " <i>will be given as soon as possible</i> ".	Exhibit C-0214 , (the quotations on p. 16)
On 24 May 2010, the People's Partnership coalition led by the UNC defeated the PNM in the 2010 Trinidad and Tobago general election. ²			
On 8 September 2010, the People's Partnership Government decided to discontinue the Project with immediate effect, ³ followed by Finance Minister Winston Dookeran's renunciation of the Project in his budget speech. ⁴			
43.	19 November 2010	A new Board appointed to the EMA reviewed the issues raised in the Appeal Action.	Exhibit C-0381 , para. 220
44.	23 May 2011	The EMA filed a motion to discontinue the Appeal Action.	Exhibit C-0284
45.	4 July 2011	The EMA was granted leave to discontinue the Appeal Action. Douglas Mendes SC, counsel for the EMA, explained that the EMA initially filed the appeal because they did not agree with the High Court's ruling, and "<i>now that the issue of the construction of the smelter plant was no longer an issue, they want to have their appeal withdrawn</i>". Professor Kenneth Julien, former NGETF Chairman, gave evidence that he viewed the EMA's decision to withdraw the appeal as influenced by "<i>the advice of the Government</i>".	Exhibit C-0288 Exhibit C-0289 Exhibit C-0387 , para. 8.1

² **C-0023**, Caribbean Elections, *Trinidad and Tobago General Election Results - 24 May 2010*, http://www.caribbeanelections.com/tt/elections/tt_results_2010.asp (last accessed 21 February 2023).

³ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 114.

⁴ **C-0252**, Budget Statement 2011, presented by the Honourable Winston Dookeran, Minister of Finance, on 8 September 2010, p. 13; **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, para. 138.