

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

China Machinery Engineering Corporation

v.

Republic of Trinidad and Tobago

(ICSID Case No. ARB/23/8)

PROCEDURAL ORDER No. 4

Members of the Tribunal

Ms. Juliet Blanch, President of the Tribunal

Mr. David R. Haigh KC, Arbitrator

Lord David Hope, Arbitrator

Secretary of the Tribunal

Mr. Govert Coppens

Assistant to the President of the Tribunal

Mr. Tim Robbins

10 October 2025

I. RELEVANT PROCEDURAL BACKGROUND

1. Pursuant to the agreed procedural calendar, the Parties were to provide their requests for the Tribunal to decide on production of documents by 12 September 2025.
2. On 12 September 2025, the Respondent informed the Tribunal that it had “*made 19 document production requests of the Claimant*” and that those requests “*ha[d] been agreed between the parties and no Order is sought from the Tribunal in relation to the Respondent’s requests*”.
3. Also on 12 September 2025, the Claimant submitted to the Tribunal 112 requests for document production in the form of a document request schedule (the “**Claimant’s Requests**”), together with Annexures A and B, and supporting exhibits and legal authorities.
4. Following exchanges between the Parties, on 29 September 2025, the Respondent wrote to the Tribunal alleging that certain of the Claimant’s Requests as submitted on 12 September 2025 had been “*reformulated*”; the Respondent requested leave to comment on those Requests, with the Claimant being permitted to respond to the new comments. The Claimant responded on 30 September 2025.
5. Later on 30 September 2025, the Tribunal took note of the Parties’ correspondence and stated that it would be willing to hear further from the Parties on the issue, in particular with respect to the Claimant’s Request Nos. 22 and 106.
6. Pursuant to the Tribunal’s directions, on 2 October 2025 the Respondent made additional comments on the Claimant’s Requests and the Claimant replied thereon on 6 October 2025.

II. DECISIONS ON DOCUMENT PRODUCTION

7. The Tribunal has reviewed the Claimant’s Requests and hereby transmits its decisions, which are directly reflected in the Claimant’s document request schedule, appended to this Order.
8. The Tribunal notes that of the Claimant’s 112 document production requests, several were agreed between the Parties.
9. The Tribunal reserves the right to order the production of further documents if, in the course of these proceedings, it appears that such documents are likely to exist or if their materiality is adequately demonstrated by other evidence (written or oral).
10. The Tribunal orders the Respondent to comply with its production obligations by Friday 31 October 2025, pursuant to the amended procedural calendar.

On behalf of the Tribunal,

[signed]

Ms. Juliet Blanch
President of the Tribunal
Date: 10 October 2025

ANNEX

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 REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Clifford Chance
Counsel for the Claimant

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

4 July 2025

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CLAIMANT'S GENERAL OBSERVATIONS (4 JULY 2025)

Why document production from the State is crucial in this case

1. At the end of the first round of written submissions, the Claimant has submitted **634** factual exhibits¹ and presented, on the basis of such documents (most of which are contemporaneous with the circumstances of the dispute), what the Respondent accepts to be a factual account "*in granular detail*".² In contrast, the Respondent has submitted only **11** factual exhibits.³
2. In this connection, the State proffered an equivocal and speculative contention that "[m]any documents *will have been lost or destroyed*" due to the long history of the dispute.⁴ Notably, it did not suggest having conducted any proper search across the files in the possession of or accessible to the State, nor plead the loss or destruction of any specific category of documents. This carefully constructed ambiguity – which is based more on speculation rather than fact – suggests a potential tactical withholding of evidence.
3. Indeed, for a project that has repeatedly been made the subject of protracted and high-level parliamentary briefings/discussions, public addresses and media headlines⁵ and which the State acknowledges to be the subject of "*an endless series of meetings*" as requested by CMEC,⁶ it is, to say the least, unconvincing that the State would have recklessly destroyed or lost all but 11 documents that are related to the project and the subject of the present dispute, or permitted the same.
4. To the extent that the State attempts to maintain its alleged loss of documents by asserting that CMEC's claim against it (as opposed to Alutrint) only "*came out of the blue*" in August 2022,⁷ such a position is plainly untenable. Without delving into substantive rebuttals at the document production phase, former Finance Minister (2015-2025) Colm Imbert's 2018 parliamentary statement would speak for itself. In then answering the

¹ In light of the Respondent's defence, the Claimant submits herewith additional factual exhibits **C-0635** to **C-0641**, to provide further context and/or support for the relevance and materiality of certain requests.

² Respondent's Counter-Memorial, ¶ 35.

³ Eleven is already a generous count: of the 11 documents labelled by the Respondent as factual exhibits, only **five** (**R-0004** to **R-0008**) are contemporaneous records/correspondence, whereas the remainder are, in reality, legal materials.

⁴ Witness Statement of Leroy Mayers, ¶ 17 (emphasis added). Despite this bare assertion, it is noted that Mr Mayers was able to recall/retrieve and provide, selectively, some highly specific information in his witness statement (e.g. ¶ 91 where Mr Mayers stated, without citing any documentary exhibit, that CMEC had suggested that the turnkey price would increase to US \$612 million and the owners' cost to US \$185 million in the re-negotiations of the 2005 EPC Contract).

⁵ See Claimant's Memorial, Annex 4.

⁶ Witness Statement of Leroy Mayers, ¶ 141.

⁷ Respondent's Counter-Memorial, ¶¶ 7, 222, 1217, 1218(6), 1230, 1232.

outstanding debt owed by the State, Minister Imbert openly acknowledged that "[t]he current claim against the Republic of Trinidad and Tobago [from CMEC] 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".⁸

5. Further and helpfully, a notable feature in this case is that the Alutrint project has been placed in the spotlight in a number of prior legal proceedings, including the local CEC litigation (2007-2011)⁹ and the international ICC arbitration and subsequent set-aside proceedings (2012-2017).¹⁰ As a result, an extensive historical record of facts and testimonies¹¹ already exists and should be conveniently retrievable by the State. Documents from or relied on in those prior proceedings – at least those that appear *prima facie* relevant and material to the present dispute (as set out in CMEC's document requests below) – need to be revealed to enable a comprehensive consideration of the factual matters and the contemporaneous positions of the parties involved.
6. An added and important note is also required to be made in this document production phase: CMEC was *not* a party to any of these proceedings and therefore, unlike the State, did not have access to the documents either submitted in or collated for those sets of proceedings.
7. For the above reasons, the requested disclosure from the State is neither burdensome nor unreasonable. Rather, it will be essential to CMEC's ability to present its case, consistent with the principles of fairness and equality between the Parties, and necessary for the fair resolution of the dispute now before the Tribunal.

What documents are in the possession, custody or control of the State

8. The phrase "possession, custody or control" in the context of Article 3 of the IBA Rules encompasses documents which a party is in physical possession or holding of and which it has the ability, legally or practically, to obtain. A sovereign respondent is generally expected to be able to obtain documents from state agencies or instrumentalities.
9. In the specific case of Trinidad and Tobago, the scope of documents in its possession, custody or control is illustrated, non-exhaustively, by the range of documents produced

⁸ Claimant's Memorial, Annex 4, p. 14; **C-0451**, Trinidad and Tobago Hansard, 2 March 2018 (20th Sitting – 3rd Session – 11th Republican Parliament), p. 10.

⁹ See Claimant's Memorial, Annex 7.

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

¹¹ CMEC notes however that as it was not privy to those prior proceedings, facts concerning or impacting CMEC will be more fully and accurately addressed in the present arbitration.

or submitted by the State (with GORTT as the respondent) in the prior ICC Proceedings. The documents the State had produced there, without asserting any obstacles, included:¹²

- (a) Cabinet Minutes and Notes;
 - (b) Alutrint Board Minutes and Papers;
 - (c) Alutrint financial documents;
 - (d) Contracts entered into by GORTT; and
 - (e) Contracts entered into by Alutrint and/or other State Enterprises.
10. In fact, in that case, the documents submitted by the State exceeded 1,300 "GORTT Pages",¹³ forming part of an evidentiary record comprising at least 270 factual exhibits.¹⁴ This stands in stark contrast to the mere 11 documents the State has submitted in this case.
11. In addition, it is apparent from the ICC Award¹⁵ that GORTT correspondence (including communications to and from various State ministers and officials), Alutrint correspondence, Alutrint corporate records, Alutrint commissioned or developed reports/analyses, etc. were also among the documents on the evidentiary record. Viewed together, it appears that the State has control of, if not readily possesses, all or substantially all Alutrint documents.
12. CMEC thus expects minimal dispute regarding the availability of the aforementioned (and other similar) categories of documents, despite that the State now (belatedly) alleges that it lacks effective control over Alutrint¹⁶ – a position CMEC disagrees with and will address substantively in its next written submission.
13. As regards any Government-level documents, it is pertinent to note that the Parties have agreed at the outset of the present proceedings that all supporting documents, factual

¹² **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.

¹³ **C-0368**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Colleen Murray dated 17 January 2014, fn. 78 (referring to "GORTT Pages 1308-1316").

¹⁴ **C-0381**, ICC Case No. 18799/VRO/AGF/ZF, GORTT's Written Opening Submissions, 13 August 2014, fn. 144 (referring to the hearing bundle reference "E5/279").

¹⁵ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015. Based on the ICC Award, all documentary evidence in the ICC Proceedings has been compiled in Bundle E – hence the Claimant's Document Request No. 6 for an index of Bundle E in order to better ascertain the scope, content and relevance of these factual documents.

¹⁶ Respondent's Counter-Memorial, § H.3.

exhibits included, will remain confidential and not be published: Procedural Order No. 2, paragraph 18; IBA Rules, Article 3.13.

14. For the avoidance of doubt, CMEC confirms that all the documents requested below are:
 - (a) reasonably believed to exist, generally either due to references to them in, or their connection with, contemporaneous documents or events, or because such documents would be expected to exist if the State's defence is taken at face value; and
 - (b) not presently in CMEC's possession, custody or control.

The Claimant's reservation of rights

15. In setting out the general observations above and the relevance and materiality of the requested documents below, the Claimant has included some preliminary responses to and/or comments on certain factual allegations and legal arguments advanced in the Respondent's Counter-Memorial and supporting materials.
16. To engage with those allegations and arguments and to request documents that may bear out or upon their substance do not constitute any admission as to their validity or merit.
17. Further, the responses and comments included herein are, naturally, preliminary points, given the short interval between the (345-page) Counter-Memorial and the document request phase. They are not to be taken as limiting the facts, evidence or legal arguments the Claimant may present or rebut in its subsequent written and oral submissions (which will benefit from further documents from the State, when produced). The Claimant expressly reserves all rights.

INDEX OF THE CLAIMANT'S DOCUMENT REQUESTS

Wherever practicable, document requests are organised and sequenced by general themes for ease of navigation. Headings are inserted in this index for the Respondent's and the Tribunal's convenience (and for convenience only). Please refer to the document request schedule for the relevance and materiality of each category of requested documents.

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DEFINED TERMS IN THE CLAIMANT'S DOCUMENT REQUESTS

Memorial	- Claimant's Memorial on Jurisdiction and Merits dated 11 November 2024
Counter-Memorial	- Respondent's Counter-Memorial on the Merits and Memorial on Preliminary Objections dated 30 May 2025
ICC Proceedings	- The arbitral proceedings between Sural Barbados (as claimant) and GORTT (as respondent) in ICC Case No. 18799/VRO/AGF/ZF
ICC Award	- The Final Award dated 30 April 2015 in the ICC Proceedings
QW WS	- Witness Statement of Qingchi Wang dated 11 November 2024
LM WS	- Witness Statement of Leroy Mayers dated 29 May 2025
MT ER	- Expert Report of Michael Tonkin dated 11 November 2024
TT ER	- Expert Report of Tim Tapper dated 30 May 2025
CH ER	- Expert Report of Chris Hillier dated 30 May 2025
IBA Rules	- International Bar Association's Rules on the Taking of Evidence in International Arbitration, as adopted on 17 December 2020
Documents	- Have the meaning given in the IBA Rules, i.e. a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means
Procedural Order No. 1 or PO1	- Procedural Order No. 1 dated 22 May 2024

The Claimant otherwise adopts the same defined terms as used in the Memorial.

For extra clarity and to ensure the completeness of the Respondent's document production, references to the "**State**", "**Trinidad and Tobago**", the "**Government**" or "**GORTT**" in the document requests should be interpreted liberally and be deemed to include **all Trinidad and Tobago Ministries (including, without limitation, the MOF and the MEEI/MEEA), Ministers, Permanent Secretaries and Deputy Permanent Secretaries, committees, task forces, working teams, and any other individuals or organisations acting on behalf of, working for, advising or authorised by any of the foregoing.**

RESPONDENT'S RESPONSE TO CLAIMANT'S REQUESTS
FOR PRODUCTION OF DOCUMENTS

8 August 2025

PRELIMINARY REMARKS

1. CMEC has seen fit to request production of no less than 112 documents or categories of documents. CMEC's requests, cumulatively and in some cases individually, call for T&T to produce massive quantities of documentation. Numerous of the requests do not satisfy the requirements of requests for document production set out in Article 3.3 of the IBA Rules on the Taking of evidence¹ and/or plainly fall foul of the exclusionary provisions of Article 9.2². Furthermore, many of the requests transgress the provisions of Articles 3 and 9 in multiple respects.
2. It is not clear why CMEC has made these requests for vast troves of documents. It seems that the requests have not been made for the proper purpose of advancing CMEC's case or responding to T&T's case. The numerous requests for masses of documents, many of which have no real relevance or only marginal relevance to the case, suggest some other strategy, which may raise questions of whether CMEC is acting in good faith.³

¹ Procedural Order No 1 §15.1 states that Articles 3 and 9 of the IBA Rules should provide guidance to the Tribunal and the parties regarding document production in these proceedings.

² See Article 3.5, which deals with T&T's right to object to document requests on the grounds set out in Article 9.2 or failure to satisfy any of the requirements of Article 3.3.

³ Commentators have said: "Preamble 3 to the IBA Rules require the parties to act in good faith in relation to all aspects of the taking of evidence...a deliberate attempt by a party to formulate intentionally burdensome requests without a legitimate basis on grounds of relevance and materiality would, in our view, breach the obligation and may provide a basis for objection or complaint outside the grounds set out in Article 9.2" (§6.141 of Mikhailovic Khodykin et al's Commentary on the IBA Rules on Evidence (**"Khodykin Commentary"**)). The Khodykin Commentary also says: "the obligation of good faith might also extend to the prohibition of conduct that *undermines* effective operation of IBA Rules in achieving the provision of an 'efficient, economical and fair process', as required by Preamble 1. For example, this may include where a party with the intention of causing delay or increasing the other party's costs, submits document requests that are intentionally burdensome..." (§12.400).

3. Below, T&T outlines, under various headings, some of its reasons for resisting production of the documents requested where such reasons relate to several of the requested documents or categories of documents. Specific responses are made in section C of each request on the Redfern Schedule.

Many of the categories of documents requested are not “narrow and specific”, as required by Article 3.3(a)(ii)

4. Article 3.3(a) requires the request to identify individual documents (Article 3.3(a)(i)) or “a narrow and specific category of documents that are reasonably believed to exist” (Article 3.3(a)(ii); underlining added). The whole point is for the requesting party to target individual documents or tight categories of documents: “The requirements mentioned are designed to ensure that the right to request a category of documents is not used as a basis for a ‘fishing expedition’.”⁴
5. The Khodykin Commentary says that: “A request for a category of documents should not be couched in nebulous terms. For example a request for ‘any and all documents’, references to lengthy time frames and/or ‘relating’ to a broad description of subject matter are, in most cases, judged by tribunals to be too broad and failing to meet the ‘narrow and specific’ standard”.⁵
6. “It is suggested that the ‘narrow and specific’ standard has generally been understood to apply to both the time frame for a Request to Produce, as well as its subject matter. Some tribunals have indicated other requirements. In one ICC case, in which the need for a high degree of specificity was acknowledged, it was suggested that a request for a category of documents should, for example, describe the kind of document, the identity of the authors and their addressees, cover a narrow time period, describe the contents and the other characteristics of the documents sought, and in general allow the other party to divine precisely what documents were responsive to the request.”⁶

⁴ Ibid, §6.56.

⁵ Ibid, §6.57.

⁶ Ibid, §6.59.

7. “In our view, the correct approach is to consider whether the description provided in the request is adequate to enable the party on whom the request is served to judge without too much difficulty whether a particular document it has in its possession falls within the category of documents requested or outside it”.⁷
8. The Khodykin Commentary cites the following examples of ICC cases where a tribunal regarded a request for a category of documents as being insufficiently specific and refused to make an order for production in terms of the request⁸:

“Example 1

Correspondence, reports, meeting minutes, notes, internal memoranda, and emails relating to twelve specified topics and a period exceeding six years.

Example 2

Copies of any correspondence or other written communications to or from potential buyers or their representatives regarding or referring to their receipt of the internal audit reports and/or the internal audit reports themselves.

Example 3

Copies of documents setting out [Company X]’s policies with respect to (a) the [Y] business, and/or (b) the receipt of cash deposits in [country Z].

Example 4

All Field Site Instruction for Areas [A], [B], [C], and [D]...

Example 5

The requesting party was seeking production of ‘documents assessing or relating to the assessment of [Company X]’s equity, created between [date A] and [date B], excluding [Company X]’s and [Respondent]’s financial statements and documents (such as documents produced by...) generated for the purpose of preparing [Company X]’s and [Respondent]’s financial statements in the normal course of business.’” (underlining added)

⁷ Ibid, §6.60

⁸ Ibid, §6.62.

In example 5, the tribunal made the following observation:

“The description ‘assessing or relating to the assessment of [Company X]’s equity’ does not elicit the type of automatic understanding of the nature or the responsive document, or category of documents, sought, which a sufficiently detailed document request – indicating narrow parameters such as the auditors, recipients, specific contents, and specific characteristics of the documents – would. Virtually any [Company X] document could be interpreted as ‘relating’ in some way to the assessment of its equity and, therefore, be covered by this document request.” (underlining added)

9. Many of the categories of documents CMEC is now seeking:
 - are not “narrow and specific”, but rather are wide-ranging and unspecific;
 - are unlimited in time or have lengthy time frames;
 - do not have descriptions of documents which are adequate to enable T&T to judge “without too much difficulty” (see §7 above) whether a particular document in its possession falls within or without the category of documents requested; and
 - follow the form of one or other of the Examples referred to in §§5 and 8 above, in respect of which tribunals have refused to make an order for production where (for instance) the party requesting documents has used phrases like “in relation to”, which various tribunals have said may cover documents of unlimited scope.
10. Furthermore, many of the categories of documents CMEC is now seeking are excluded by one or more of the provisions of Article 9.2.
11. The wide-ranging scope of various of CMEC’s requests means that the documents sought are excluded on the grounds of:
 - “unreasonable burden to produce the requested evidence” (Article 9.2(c)), in light of the time, cost and other burdens associated with the production of the documents sought⁹; and/or

⁹ For a discussion of the approach of arbitral tribunals to the question whether a document request is unreasonably burdensome, see the Khodykin Commentary, §§12.242 to 12.257.

- “considerations of procedural economy, proportionality, [and] fairness...that the Arbitral Tribunal determines to be compelling” (Article 9.2(g)), the proportionality test requiring that a balance be achieved between the benefits of production and the burdens associated with production¹⁰.

12. So, for example, Request 69 is:

“To the extent not covered by the above requests, any other Alutrint board minutes, resolutions and/or papers which addressed, assessed or otherwise reviewed CMEC’s claim in relation to the Project (including the settlement or negotiation thereof or other response strategy thereto)”.

13. The broad scope of the documents sought in Request 69 would require Alutrint to trawl through all its documentation relating to “CMEC’s claim in relation to the Project”. It is notable that there is no identified time frame for this document request. This means that the trawl would involve examining documents produced over a period of well over a decade.

14. What is more, the scope of the trawl is itself uncertain. The request, being for T&T to produce documents which addressed, assessed or otherwise reviewed “CMEC’s claim in relation to the Project”, requires T&T (and Alutrint, whose documents in fact are being sought)¹¹ to know what that phrase means.

15. Does it refer to CMEC’s claim of February 2011 when CMEC made its first comprehensive claim by letter against Alutrint [**R-0004**], referred to in Appendix II to the Respondent’s Counter-Memorial, and the subsequent claims set out in the Appendix II?

16. Or does it also refer to one or more of the earlier claims referred to in §386 of the Memorial and footnotes 749 to 752 thereof, being CMEC’s claims for mobilization

¹⁰ Khodykin Commentary, §§12.310, 12.313.

¹¹ This request is generally problematic as Alutrint is not a party to this arbitration. Alutrint’s documents are not CMEC’s documents: see further below.

payments [C-0084 and C-0231], progress payments [C-0183, C-0235 and C-0246], downtime [C-0186 and C-230] and site maintenance [C-0271, C-0273 and C-0276]? And, if so, which?

17. If (which is uncertain) the request refers also to any of the said earlier claims referred to in §386, what is the relevance of such claims to the matters in issue between the parties in this arbitration?
18. Request 69 is therefore plainly not for a “narrow and specific” category of documents, is of uncertain scope, is unreasonably burdensome and ignores considerations of procedural economy, proportionality and fairness.
19. Additionally, in respect of Request 69, the documents referred to in the bracketed part (in relation to “settlement or negotiations”) are plainly excluded for coming within the “privilege” referred to in Article 9.2(b) and documents “made in connection with and for the purpose of settlement negotiations”, referred to in Article 9.4(b) (as to which see below).
20. Yet further in respect of Request 69, it is quite unclear what “or other response strategy thereto” (within the bracketed part) even means, with the consequence that the request breaches the test referred to in §7 above, in that respect also.
21. Request 69 is but one example of numerous of CMEC’s requests which offend in multiple respects the principles which underlie the proper formulation of a document production request.
22. Another example is Request 71:

“The recordings, minutes, notes, briefs, summaries, reports and other similar documents recording or reflecting the content of and any follow-up for various meetings with CMEC. The list of meetings include non-exhaustively:”
23. There then follows a list of no less than 19 meetings, all of which were attended by CMEC itself, which took place over a 7-year period between October 2010 and October 2017.

24. This request offends against the requirements of Article 3 and/or is excluded by Article 9 for the same reasons as Request 69 (referred to above).
25. Further, what is the precise scope of “other similar documents” and also of “any follow-up” (see the test referred to in §7, above)?
26. Also, what is the precise scope of documents “reflecting” the content of and any follow-up etc”? The word is plainly intended to have a different meaning from "recording", but its meaning is opaque, so it is quite unclear what documents it is intended to target
27. It is notable also that this request follows a form very similar to the request in Example 1, referred to in §8, above, as to which the tribunal refused to make an order for production.
28. Furthermore, the list of meetings is said to be “non-exhaustive”. It is quite unclear what that means (see §7, above). What is the character, scope or nature of the other meetings, outside the 19 meetings specified, as to which CMEC is seeking recordings, minutes etc? And what is the time frame for such other meetings?
29. Also, there are multiple further objections to Request 71:
- this is a request for documents relating to meetings which CMEC itself attended and therefore CMEC may be expected to have its own notes, minutes etc, which renders the request unreasonably burdensome, as to which see below;
 - as CMEC says in §B.4 of this request “many of these meetings involved discussions of settlement proposals...”, it is plain that this request also falls foul of the said privilege referred to in Article 9.2(b) and 9.4(b).
30. It is also plain that CMEC is not content with its present 112 requests for individual documents and categories of documents, but is gearing up to make yet further requests in light of T&T’s responses to CMEC’s present requests.
31. For example, Request 46 is for: “A list of all Alutrint board and shareholders’ meetings held to date”. (underlining added)

32. Quite apart from not identifying a “narrow and specific” category of documents (there is no time limit, with the result that the request stretches over a period of some two decades) and therefore being unreasonably burdensome and ignoring procedural economy, proportionately and fairness, this request is obviously but a precursor to further requests: see the “Note” which states that CMEC “reserves the right to request further minutes and/or papers after reviewing the list provided”.
33. Additionally, this request, which requires T&T to compile “a list”:
- offends against the requirement that requests may only be made for documents and categories of documents which are in existence¹²; and
 - contradicts §14(a) of CMEC’s General Observations, which “confirms” that all the requested documents are “reasonably believed to exist”.
34. Another example is Request 47.
35. This request is for: “A list of all Alutrint board and shareholders’ written resolutions to date” (underlining added). This request is unsustainable for the same reasons as Request 46. But also, just as in the case of Request 46, the “Note” indicates that CMEC is planning to seek yet further documents: “CMEC reserves the right to request specific written resolutions after reviewing the list provided”.
36. Similarly, in Request 6, CMEC seeks “An index of Bundle E...in the ICC Proceedings” (underlining added).
37. Apart from the fact that this is a request for a document covered by privilege (Article 9.2(b)) and commercial confidentiality (Article 9.2(e)) (as it emanates from arbitration proceedings between T&T and Sural Barbados Ltd (**Sural**)), again the “Note” to the request says: “However CMEC reserves the right to request additional documents from Bundle E upon review of the index”. No doubt CMEC has in mind to make further requests for all sorts of documents appearing in the Bundle E index.

¹² See Article 3.3(a) and Khodykin Commentary, §§12.62 to 12.63.

The position of Alutrint

38. Requests 42 through 70 all concern Alutrint's documents. Alutrint was the subject of CMEC's (contractual) claims for payment under the EPC Contracts, but (obviously) is not a party to this (treaty) arbitration which is brought against the State.
39. Alutrint is owned 60% by T&T and 40% by Sural. Sural is incorporated in Barbados and is a member of the Sural Group of companies. Sural and the Sural Group are commercial entities wholly independent from T&T.
40. CMEC has never previously disputed the 60/40 ownership split of Alutrint. This ownership status is acknowledged in paragraph 19 of CMEC's Request for Arbitration, and again in paragraphs 33.2 and 36.5 of the Memorial. Notably, CMEC has exhibited the Award in the Sural Proceedings, in which the 60/40 division of Alutrint's ownership as between T&T and Sural was not disputed. Thus, notwithstanding the belated and unreasonable Request 42, which is addressed below, the reality is that Alutrint is a third party to this arbitration, and is co-owned by a wholly independent third party.
41. To these issues, the Respondent reminds the Tribunal of the points made by T&T in its Counter-Memorial concerning the true nature of Alutrint and the role of the State in such enterprises within Trinidad and Tobago.¹³
42. In the course of its numerous requests for Alutrint documents, CMEC does not consider any of these issues nor explain on what basis it feels able simply to assume that Alutrint's documents are the Respondent's documents. Alutrint is a separate entity from GORTT and the State. It has independent corporate personality. Unless or until CMEC confronts these issues, the Respondent's position is reserved.
43. For present purposes, T&T highlights the legal and practical concerns about requesting for documents from Alutrint:
- (1) Due regard for the legal rights and liabilities of Sural, a wholly independent third party As CMEC knows well, there had been litigations between T&T and Sural,

¹³ Counter-Memorial, §§74-85.

and there would be understandable sensitivity in engaging with Sural unnecessarily. See for example **Waste Management v Mexico** where the tribunal considered such similar concerns.¹⁴

- (2) Even if such requests are made, the position in respect of Alutrint's retention of documents is unclear. The documents sought are historic and relate to a period when digital storage systems were less sophisticated, and hard copy storage was the norm. Given the time that has passed, it is unclear the extent to which Alutrint's documentary records have been physically maintained and if so their order (how they have been collated and labelled), and the access to those documents. The position in respect of electronic documents is the same, but there must be doubts as to the accessibility of servers and computer storage systems that have been out of use for many years, as a result of Alutrint's commercial and day-to-day activities ceasing after the project was terminated.
- (3) The Tribunal is invited to bear in mind these difficulties when considering whether to order the Respondent to take *any* steps with respect to the recovery of documents from Alutrint.
- (4) In any event, T&T submits that most of CMEC's requests for Alutrint documents are irrelevant or otherwise unnecessary or disproportionate.

Many of the documents requested are documents which are, or should be, already in CMEC's possession

- 44. In §14(b) of its General Observations CMEC says that the documents it is requesting are not presently in its possession, custody or control – hence, CMEC has purported to satisfy Article 3.3(c).
- 45. But many of the requests are for documents which are, or should be, in CMEC's possession. Examples are Request 71 (referred to above, involving various meetings which CMEC attended), Request 85 ("CMEC's requests to Alutrint for an extension of

¹⁴ICSID Case No. ARB(AF)/00/3 Procedural Order No.2 (27 November 2002) §§7-17

the “Time for Completion...” and Request 89 (“...any upstream drawings and any other engineering deliverables received from CMEC/NEUI/THEIDI”).

46. CMEC has not explained how §14(b) of the General Observations is consistent with these requests for documents which emanated from CMEC or relate to events to which CMEC was a party.
47. The above requests are therefore unduly burdensome. The Khodykin Commentary refers to a case in which “the arbitral tribunal considered as unduly burdensome a request for documents that should already have been in the requesting party’s possession. There was therefore no reason to compel the other party to engage in a broad search of its files for those documents” (§12.256).
48. There are also many requests for documents relating to the number of CMEC’s own personnel who were involved in the Project. Request 95 is for documents showing the number of CMEC personnel physically present on the Project site between December 2008 and March 2009; Request 96 is for documents recording entry into Trinidad and Tobago of CMEC’s 77 construction personnel; Request 97 is equivalent to Request 95, but in respect of the period between June 2009 to December 2011. It might reasonably be expected that CMEC would have documents (or sufficient documents) relating to the numbers of its own personnel.

Numerous of the documents requested lack “sufficient relevance to the case or materiality to its outcome”, as required by Article 9.2(a)

49. It is incumbent upon CMEC to state how the documents it has requested are “relevant to the case and material to its outcome” (Article 3.3(b)). Both limbs (“relevant to the case” and “material to the outcome”) need to be satisfied.¹⁵ The two limbs may reflect two different perspectives, respectively the perspective of the parties and the perspective of the Tribunal.¹⁶

¹⁵ See §§6.91 and 6.106 of the Khodykin Commentary.

¹⁶ “‘Relevant to the case’ may be seen as meaning that a document or contents of a document will reasonably assist a *party* in establishing its case while ‘material to its outcome’ is to be seen as relating to the *tribunal’s*

50. The Tribunal shall exclude from production any document for “lack of sufficient relevance to the case or materiality to its outcome” (Article 9.2(a)).
51. It is notable that, whereas the applicant for document production has only to state that the document in question is “relevant” to the case, the Tribunal “shall” exclude from production documents which lack “sufficient relevance” (underling added).¹⁷ So requests for documents which only have some relevance to the case, but which lack sufficient relevance, are to be refused.
52. “Materiality to the outcome of the case” is a separate and more onerous requirement than “relevant to the case”.¹⁸ As stated, it is a requirement from the perspective of the Tribunal.¹⁹ “The key question to determine whether the requirement is met is if the requested document will have a material effect on the tribunal’s award. The document(s) must add something to the evidence on a factual issue that is on a critical path to a determination of the dispute. If it is clear that the document will have no bearing on the matters to be decided then the requirement is not met”²⁰ (underlining added).
53. Examples of circumstances where a document may be found not to be material to the outcome of the case are “where the matter to which the document relates is connected with events underlying the dispute but is not on the critical path to a determination by the tribunal, or where the tribunal already has sufficient evidence on the particular issue”.²¹

right to evaluate a requested document in light of whether it will have a bearing upon the final award”: Khodykin Commentary, §6.92.

¹⁷ “The requirement of “sufficient” relevance suggests that there are gradations of relevance and a tipping point (sufficiency) where the test is met”: Khodykin Commentary, §12.67.

¹⁸ Ibid, §6.102.

¹⁹ Ibid, §§6.92 and 6.102.

²⁰ Ibid, §6.102.

²¹ Ibid, §6.105.

54. “It is widely accepted that the party seeking to obtain document production will generally have the burden of demonstrating the relevance and materiality of the requested evidence.”²²
55. Numerous of the requested documents lack sufficient relevance to any issue in the case, still less are they material to the outcome of the case, within the meaning of that phrase referred to above. T&T sets out where documents are not sufficiently relevant to the case and/or are not material to its outcome in its responses to the individual requests.

Numerous of the requested documents are the subject of “legal impediment or privilege” referred to in Article 9.2(b) and elaborated in Article 9.4 and/or “commercial confidentiality” referred to in Article 9.2(e)

56. Numerous of the documents requests are, on their face, obviously subject to the “legal impediment and privilege” referred to in Article 9.2(b) and elaborated in Article 9.4 and/or the “commercial confidentiality” referred to in Article 9.2(e). So much so that it is unclear why CMEC has made these requests.
57. Article 9.4(a) says that the Tribunal may take into account “any need to protect the confidentiality of a Document created... in connection with and for the purpose of obtaining legal advice”. This provision protects, inter alia, the confidentiality of documents created by the lay client (here T&T) in connection with and for the purpose of obtaining legal advice.²³
58. The above privilege includes “litigation privilege”. This privilege extends to communications between the lay client (here T&T) and a third party, where the communication is for the dominant purpose of litigation or arbitration which is existing or reasonably contemplated: “Litigation privilege is therefore generally wider than legal advice privilege in that it extends to communications with non-lawyers”.²⁴

²² Ibid, §6.130.

²³ See the Khodykin Commentary, §§12.143 to 12.148, where this aspect of legal advice privilege is discussed.

²⁴ Khodykin Commentary §12.150, and see generally §12.149 to 12.151.

59. Article 9.4(b) says that the Tribunal may take into account “any need to protect the confidentiality of a document created... in connection with and for the purpose of settlement negotiations”.
60. This privilege is also known as “without prejudice” privilege. As is well known, this privilege covers documents created in connection with negotiations between the parties to litigation or arbitration for the purpose of seeking to achieve a settlement. This privilege also covers communications with third parties which are for the same purposes: “it is not uncommon for the without prejudice rule to be recognised as covering third-party communications commissioned to facilitate a settlement”.²⁵
61. Article 9.4(d) says that the Tribunal may take into account “any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document...or advice contained therein or otherwise”.
62. The protection of commercial confidentiality is catered for by Article 9.2(e).²⁶ This protection extends to third party confidentiality as well as commercial confidentiality of the parties²⁷: “Generally speaking a tribunal will be reluctant to require a party to the arbitration to breach its agreement with a third party if this can be avoided.”²⁸
63. As stated above, numerous of CMEC’s document requests engage one or more of the above aspects of privilege or commercial confidentiality. T&T sets out what privilege and/or commercial confidentiality is relied on in its responses to CMEC’s individual requests.

²⁵ Ibid, §12.183.

²⁶ Ibid, §§12.275 to 12.292.

²⁷ Ibid, §§12.284 to 12.287.

²⁸ Ibid, §12.285.

CMEC's suggestion that T&T has engaged in a "tactical withholding of evidence"

64. In the Memorial, CMEC deals in detail with numerous factual matters, much of which is not relevant to any issue in the case: see the Counter-Memorial, §35, where this is stated.
65. Similarly, CMEC has (so far) adduced 634 factual exhibits in this arbitration, most of which are also irrelevant to any issues in the case. A glance at the first 48 pages of the Consolidated Index of Documents Filed by the Claimant, where the 634 factual exhibits are enumerated, shows that the overwhelming majority of those exhibits will play no part in the resolution of this arbitration.
66. T&T has been content to advance its detailed response to CMEC's case by relying on a small amount of factual exhibits which, of course, are additional to the factual exhibits which CMEC has adduced.
67. In light of this state of affairs CMEC has seen fit to allege against T&T that it has engaged in "carefully constructed ambiguity" which "suggests a factual withholding of evidence" (§2 of CMEC's General Observations).
68. There is no substance in this suggestion. The simple fact is that T&T has adduced such factual exhibits as (along with those adduced by CMEC) are necessary to make its case. There is no merit in adducing masses of documents just for the sake of it. The volume of documents produced by T&T in the Sural v GORTT ICC arbitration, where the factual issues were entirely different, is neither here nor there (see §§9 to 11 of CMEC's General Observations).

CMEC has used its General Observations to re-argue its case

69. CMEC has seen fit, in its General Observations, to re-argue various features of its case, saying that it has "included some preliminary responses to and/or comments on certain factual allegations and legal arguments advanced in the Respondent's Counter-Memorial and supporting materials" (§15).

70. In doing so, CMEC has trespassed beyond the proper confines of a request for production of documents pursuant to §15.3 of Procedural Order No 1 and in accordance with Annex C thereto. “A regrettable development in relation to the use of the Redfern Schedule is the practice of some counsel to use it as a vehicle for making submissions on the merits of the case – in particular, unnecessarily stating again and against what their case is...”.²⁹
71. However, the fact that CMEC has seen fit to re-argue its case leaves T&T with no alternative but to respond, lest a lack of response suggests that T&T has no response.
72. As to whether CMEC’s claim against T&T “came out of the blue” (a very important issue in the case), CMEC says, at §4, “Without delving into substantive rebuttals at the document production phase...” and then proceeds to do that very thing viz to delve into substantive rebuttals at the document production phase.
73. But the rebuttal is hopeless. That CMEC’s claim against T&T came out of the blue is obvious: see all the matters referred to in §§2 to 8 and 211 to 226 of the Counter-Memorial.
74. The best that CMEC can do by way of “substantive rebuttal” is to refer to one statement made by a Minister in the PNM administration in a political context (in Parliament) (see §4 of the General Observation). In that statement the Minister was complaining that the previous UNC administration had left T&T with a substantial claim; in context it is understandable that the Minister did not say that the previous admission had left T&T with 60% of such a claim by virtue of T&T’s 60% interest Alutrint. That CMEC can find nothing other than this sole statement of the Minister to support its case that CMEC’s claim against T&T did not come out of the blue speaks volumes.

²⁹ Ibid, §6.204.

CLAIMANT'S OVERALL REPLIES TO RESPONDENT'S PRELIMINARY REMARKS AND GROUNDS OF OBJECTION (12 SEPTEMBER 2025)

Overview of the Status of Document Production

1. At the outset, it is worthwhile to briefly recapitulate the status of document production as at this point of the arbitral proceedings. The table below summarises where the Parties stand – how many documents each side has submitted, how many they have requested from the other, and how many have been voluntarily produced:

	Claimant	Respondent
Factual exhibits submitted	648 ¹	11 ²
Additional factual evidence submitted with expert reports	> 5,000 ³	Nil
Document requests made	112	19
Document requests agreed	19 (100% of Respondent's requests)	15 agreed ⁴ 6 partly agreed ⁵ (18% of Claimant's requests)
Voluntary document production	649	12

2. It is evident that the Claimant has undertaken the heavy lifting in establishing the factual record in this arbitration – an effort it has carried out conscientiously to reconstruct a two-decade timeline in what is a factually complex dispute. The Claimant has also adopted a cooperative approach to the Respondent's document requests (despite their

¹ The Claimant submitted 634 factual exhibits with its Memorial, and now submits an additional 14 factual exhibits with its document request schedule. These additional exhibits – submitted in light of the Respondent's defence in the Counter-Memorial and its objections to document production – either provide further context and/or support for certain requests, or directly address and rebut specific objections raised by the Respondent in resisting production.

² As noted in the Claimant's General Observations (fn. 3), the count of 11 R- factual exhibits is already generous: of the 11 documents labelled as factual exhibits, only five (R-0004 to R-0008) are contemporaneous records/ correspondence, whereas the remainder are, in reality, legal materials.

³ The engineering and design documents alone, compiled within DC-0013 to DC-0015, comprise a total of 5,488 documents.

⁴ Claimant's Requests Nos. 31 (agreed subject to redaction), 72, 80-86, 107-112.

⁵ Claimant's Requests Nos. 16-18, 21, 87-88. For Requests Nos. 16-18, 21, the Respondent partially agreed to the scope of the request. For Requests Nos. 87-88, the Respondent agreed to produce responsive document(s) in its possession or custody, but not those under its control.

(over-)broad scope and lack of substantiation),⁶ which has required it to devote significant time and resources to locating and sorting through a substantial volume of responsive materials.

3. In contrast, the Respondent has taken a markedly unconstructive and, at times, unreasonable approach to document production. This is reflected not only in the statistics – where the Respondent has resisted the vast majority of the Claimant's requests (for no sustainable reasons) – but also in the substance of its responses. As elaborated below, the **Respondent has failed to engage meaningfully with the Claimant's requests, instead relying on speculative and unsubstantiated assertions that are riddled with inconsistencies, flatly contradicted by the evidentiary record, and based on misinterpretations or misapplications of the IBA Rules.**
4. This pattern of minimal cooperation and blanket objections has unnecessarily – or *tactically* – prolonged the document production process, delaying the Claimant's access to documents critical for the preparation of its Reply Memorial by nearly two months. It has also substantially increased the time and costs associated with the taking of evidence.
5. This is the context in which the Claimant's document request schedule is now placed before the Tribunal. There remain over 90 contested requests that require the Tribunal's determination. While unfortunate, as will be confirmed by the number of requests the Tribunal ultimately grants, the need for such intervention arises from the Parties' divergent approaches to document production and the **resulting imbalance in access to evidence** that requires correction.
6. In this connection, the Claimant notes that the Respondent has, in the course of its objections, levelled numerous serious but unwarranted and unfounded accusations against the Claimant. These include a litany of inflammatory allegations such as "*fishing*", "*disingenuous*", "*simply make-work requests*", "*wholly improper*", "*wholly meretricious*", "*ill-conceived*", "*manufactured*", "*baseless*", and "*exceedingly poor conduct*". Such accusations should not be taken lightly. The Claimant's requests are carefully formulated, anchored in contemporaneous evidence, supported by clear cross-references to pleadings and exhibits, and made for the legitimate purpose of advancing its case or responding to the Respondent's. Even a cursory comparison of the Parties' respective document request schedules reveals that the Claimant has approached the process with far greater care, precision, and diligence.

⁶ The Claimant's good-faith endeavour to cooperate with the Respondent's document requests should not be construed as acceptance of the appropriateness of those requests or the validity of the Respondent's purported rationale – in respect of which see the Claimant's General Response to the Respondent's Document Request Schedule.

General Problems in the Respondent's Position: Contradictions, Speculative Assertions, and Evasive (Non-)Responses

7. Turning to the substance of the Respondent's responses, they are permeated with inconsistencies at various levels. This part sets out overall observations regarding the Respondent's pattern of contradictions which calls for heightened caution to safeguard the integrity and/or effectiveness of the document production process. The next part will then address the legal or technical dimension, specifically the interpretation and application of the grounds of objection raised by the Respondent by reference to the IBA Rules.

Contradictions Between Contentions and Facts – False or Misleading Factual Representations

8. In formulating its objections, the Respondent has made several representations that are either knowingly false or, at the very least, misleading – or has advanced them recklessly, with no regard for their truth or accuracy.
9. Most striking are the Respondent's blanket objections to all requests for Cabinet Minutes⁷ and Alutrint Board Minutes, based respectively on the following contentions:
- (a) Cabinet Minutes contain individual Minister deliberations and are therefore protected by the doctrine of joint responsibility (i.e. Cabinet deliberative privilege);⁸ whereas
 - (b) Board Minutes are "*typically concise records of decisions taken by a company's board; they are not detailed notes of the meeting*" (emphasis added) and are therefore irrelevant for providing further context.⁹
10. In reality, however, the evidence – the actual copy of such documents – indisputably reveals the opposite:
- (a) Cabinet Minutes record only the decisions of the Cabinet for implementation and are not deliberative,¹⁰ thereby giving rise to no application of Cabinet deliberative privilege; whereas

⁷ Except the Cabinet Minute and Cabinet Note(s) underlying the 8 September 2010 termination announcement, which the Respondent agreed to produce on a "*without prejudice to the objections*" basis: Respondent's Response to Request No. 31.

⁸ Respondent's response to Claimant's Request No. 25.

⁹ Respondent's response to Claimant's Request No. 49.

¹⁰ **C-0642**, Trinidad and Tobago Cabinet Minute No. 477, 4 March 2010; **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.

- (b) Alutrint Board Minutes contain detailed records of board members' discussions and related context,¹¹ thereby offering valuable contemporaneous insights into the operation of Alutrint, the Project, and the specific matters discussed.

11. On any view, this is a clear instance of an inexcusable factual misrepresentation.
12. Furthermore, with respect to Cabinet-level documents generally (i.e. Cabinet Minutes and Cabinet Notes), the Respondent has advanced a number of other speculative yet assertive contentions – each of which is again contradicted by the factual record.

Respondent's Contentions ¹²	Factual Evidence
<i>"It would also be unduly burdensome for T&T to produce the [Cabinet] documents, given the need to (i) find these historical records, which are likely to be in paper form, and (ii) then undertake a process of review and redaction, to remove all content which does not relate to the request (inevitably, unrelated topics will have been discussed at the relevant cabinet meeting) and to remove any content that is confidential or of special political sensitivity (IBA Rules, Article 9(2)(f)). Inevitably, Cabinet Notes and Cabinet Minutes will contain material that is privileged or otherwise politically sensitive and confidential."</i> (Emphases added)	(a) The Cabinet is serviced by a Cabinet Secretariat that provides specialised administrative support, including the recording and transmission of Cabinet Minutes [C-0513, p. 1]. Therefore, in paper form or not, there exists a readily maintained and accessible central repository of Cabinet Minutes. (Moreover, a number of Cabinet documents were already submitted and compiled in Bundle E of the ICC Proceedings – the burden to retrieve which is negligible.) (b) Each Cabinet Minute records decisions concerning a focused subject matter. This is evidenced by Cabinet Minute No. 477 of 4 March 2010, which is titled <i>"Acquisition of the Shareholding of the Minority Shareholder, Sural Barbados Limited, in Alutrint Limited"</i> and records decisions solely related to that matter [C-0642]. Therefore, contrary to the alleged "inevitability" of "unrelated topics", this issue does not appear to arise in reality. (c) Absent exceptional circumstances,¹³ there is no obstacle to the production of Cabinet Minutes and Cabinet Notes, nor any compelling – let alone "inevitable" – need for redaction, when they are required as evidence in arbitration. This

¹¹ C-0315, Minutes of Alutrint Board Meeting No. 2012-01 on 13 March 2012.

¹² Respondent's response to Claimant's Request No. 25.

¹³ Any claim of privilege or special political sensitivity must be specifically established (with the latter being subject to a "compelling" standard to justify withholding or redaction). Confidentiality is not, in and of itself, a ground for excluding relevant evidence.

	is clearly demonstrated by the State's prior production of Cabinet Minutes and Cabinet Notes <i>unredacted</i> in the ICC Proceedings [C-0364 , pp. 2-3; C-0642].
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13. Another set of troubling examples is the Respondent's various representations regarding the status of Alutrint and its alleged 40% shareholder, Sural. In an attempt to support its blanket objection to producing any Alutrint documents, the Respondent asserted no fewer than eight times that there are "*real and genuine*" "*legal and practical*" concerns about requesting documents from Alutrint.¹⁴ Part of this alleged concern rests upon a vague contention of "*understandable sensitivity in engaging with Sural unnecessarily*", on the basis of "*there ha[ving] been litigations between T&T and Sural*".
14. The Claimant will address this objection more substantively below in the context of the question of possession, custody or control. For the immediate purpose of illustrating contradictions, the Claimant highlights the following factual matters which demonstrate that the Respondent's alleged concern is *contrived and unfounded*:
- (a) Sural had disengaged from the Project by December 2007,¹⁵ with its directors formally exiting the Alutrint board in June 2012.¹⁶
 - (b) Sural, if it ever had access to Alutrint's internal documents, had long ceased to do so. In fact, Sural itself had to request Alutrint Board Minutes and Papers, Alutrint contractual documents, Alutrint financial and accounting documents, etc. from GORTT through formal document requests in 2013.¹⁷
 - (c) Sural and GORTT reached a settlement agreement in 2017 that resulted in the dismissal with prejudice of all pending legal proceedings between them.¹⁸
 - (d) Sural closed operations and entered a state of paralysis in 2017,¹⁹ and appears to have since gone out of business (noting that its website was decommissioned

¹⁴ Respondent's Preliminary Remarks, ¶ 43; Respondent's responses to Claimant's Requests Nos. 42, 65, 70, 90, 92, 98, 100.

¹⁵ **C-0014**, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, ¶¶ 96, 269.

¹⁶ **C-0369**, ICC Case No. 18799/VRO/AGF/ZF, Witness Statement of Leroy Mayers dated 20 January 2014, para. 46.

¹⁷ **C-0643**, ICC Case No. 18799/VRO/AGF/ZF, Tribunal's Ruling on Sural Barbados' Disclosure Requests, 27 November 2013, Categories (1), (4), (5).

¹⁸ **C-0441**, 11th Cir. Case No. 16-15942, Sural Barbados' Motion to Stay Appeal Pending Closing of Settlement, 25 July 2017, p. 4; **C-0644**, 11th Cir. Case No. 16-15942, Joint Motion to Dismiss, 15 December 2017, p. 4.

¹⁹ **C-0645**, F. Diaz, *Sural Workers Demand Reactivation of the Company and Payment of Accrued Benefits*, Latin America News, 3 June 2023, p. 1.

around August 2021²⁰).

15. In advancing all these (and other) unsubstantiated and speculative assertions – while presenting them in *highly assertive* terms – the Respondent has failed to conduct itself responsibly and/or in good faith. These representations risk seriously misleading the Tribunal as to the content, relevance, or accessibility of the documents sought. The Claimant submits that such conduct is sanctionable under Article 9.8 of the IBA Rules and expressly reserves its right to make further submissions on costs.
16. In the circumstances, the Tribunal should treat the Respondent's representations with particular caution and apply heightened scrutiny to any assertion that lacks evidentiary support.

Contradictions Between Merits Argument and Evidentiary Position

17. A further glaring contradiction arises from the Respondent's attempt to resist production by adopting positions that contradict its own merits arguments in the Counter-Memorial.
18. In Preliminary Remarks, ¶¶ 72-74, the Respondent insisted that CMEC's claim against it only "*came out of the blue*" in August 2022, asserting that this is "*a very important issue in this case*" and that it is "*obvious*".
19. This position is carried through in the Counter-Memorial, where the Respondent framed its case in the following terms (emphases added):

CMEC's said 25 August 2022 letter and Clifford Chance's said 26 August 2022 Notification of a Claim, came out of the blue. ***Prior to then, CMEC had never intimated any claim at all against T&T, whether pursuant to the Treaty or otherwise***, all its previous claims having been contractual claims against Alutrint pursuant to the EPC Contracts. (¶ 222)

This came out of the blue. CMEC had given ***no previous indication that it had in mind to target T&T, whether under the Treaty or at all***. (¶ 1218(6))

The unique feature of this claim is that ***T&T had no indication whatsoever that CMEC would be pursuing a claim against it until the end of August 2022***. (¶ 1230)

[...] as a consequence of ***not having been able to anticipate claims under the Treaty*** in light of CMEC's consistent posture of pursuing contractual claims against Alutrint, significant difficulty has been caused to T&T with regard to preserving and obtaining evidence. This includes obtaining the relevant documents and locating relevant witnesses, particularly as witnesses. (¶ 1235)

²⁰ C-0646, Sural's website (<http://sural.ca/>) – error messages as at 2 August 2021 and 21 August 2025.

20. Yet, in resisting production, the Respondent claims privilege over contemporaneous "*content reflecting T&T's internal assessment of CMEC's claims*", on the basis of "*T&T's privileged contemplation of CMEC's claims*" (emphasis added). ²¹
21. As will be addressed further below, this sweeping assertion of privilege is legally unsustainable. No form of privilege operates in such an all-encompassing manner without a clearly defined purpose and other type-specific limitations.
22. Leaving aside the nuances and limitations of different types of privilege for now, the point here is simple: the Respondent cannot have it both ways. It cannot simultaneously claim to have been blindsided by CMEC's claim while also asserting privilege to prevent the disclosure of documents that reflect its contemporaneous assessment of the very claim.
- (a) ***Either*** it concedes that CMEC's claim was contemplated – in which case its narrative of surprise collapses and its arguments on delay, prescription, acquiescence, and estoppel fall away;
- (b) ***Or*** it maintains (for now) that no claim was anticipated – in which case it is plain that litigation privilege cannot possibly apply, it will struggle to establish any other form of privilege, and fairness would otherwise require the disclosure of these internal documents as they go to the heart of the Respondent's own pleaded position.
23. The Respondent's current predicament is a direct consequence of its contrived case theory. Whether or not the "*coming out of the blue*" argument has any substance at all will be revealed by the internal assessment documents themselves, which the Tribunal should order to be produced.

Contradictions Between Positions in the ICC Proceedings and in the Present Arbitration

24. The Respondent has avoided engaging with the Claimant's General Observations, ¶¶ 8-12, where CMEC specifically highlighted the range and type of documents the State had produced or submitted in the ICC Proceedings without asserting any legal or practical obstacles.
25. This avoidance appears to be a last-resort reaction to the unexplainable and drastic shift in the State's approach to document production between the two proceedings.
26. The table below summarises the most striking inconsistencies, focusing on the two categories of documents that remain of great relevance and evidential value in this arbitration: Alutrint documents and Cabinet documents.

²¹ Respondent's response to Claimant's Request No. 38.

	The State's approach to document production	
	ICC Proceedings	Present Arbitration
Alutrint documents	• Extensive production and submission of Alutrint documents, including e.g.: ○ Alutrirt Board Minutes and Papers ○ Alutrirt contractual documents ○ Alutrirt financial and accounting documents ○ Alutrirt correspondence ○ Alutrirt corporate records • <i>Document requests between the parties premised on the basis of GORTT being in possession, custody or control of Alutrirt documents (whilst Sural was not)</i>	• Blanket refusal to produce any Alutrirt documents, based on the contention that <i>"Alutrirt's documents are not the [State]'s documents"</i>²² • Despite this contention: ○ Submitted and relied on 5 Alutrirt documents as R- exhibits (R-0004 to R-0008) ○ Agreed to produce discrete Alutrirt documents in Requests No. 84-85 and 108-110 ○ <i>Therefore implicitly confirmed possession, custody or control of Alutrirt documents</i>
Cabinet documents	• Cabinet Minutes and Cabinet Notes produced and submitted – as evidenced by GORTT's production list [C-0364]; these documents formed part of the hearing bundle and were referred to in the ICC Award • Redaction requested only for <i>"a) legally privileged material; b) consideration by the Cabinet of matters other than those identified [in the request]"</i> [C-0643, pp. 13-14] • Conscious and targeted approach to privilege – e.g. acknowledging a 2010 Cabinet Minute which recorded the State's decision to make an offer to purchase Sural's interest, the valuation of such interest and its internal assessment, and the	• Blanket refusal to produce any Cabinet documents,²³ contending:²⁴ ○ <i>"Inevitably, Cabinet Notes and Cabinet Minutes will contain material that is privileged or otherwise politically sensitive and confidential."</i> ○ <i>"Cabinet minutes are not usually disclosable, on the grounds that to do so would interfere with the important doctrine of joint responsibility"</i> ○ Requested redaction of <i>"any content that is confidential or of special political sensitivity"</i> • Blanket claim of unspecified privilege over any <i>"documents that pertain to T&T"</i>

²² Respondent's Preliminary Remarks, ¶ 42.

²³ Except the Cabinet Minute and Cabinet Note(s) underlying the 8 September 2010 termination announcement, which the Respondent agreed to produce on a *"without prejudice to the objections"* basis: Respondent's Response to Request No. 31.

²⁴ Respondent's response to Claimant's Request No. 25.

	The State's approach to document production	
	ICC Proceedings	Present Arbitration
	appointment of a negotiation team [C-0642] " <i>is not privileged and is material</i> " [C-0364, p. 3] – notwithstanding that the 2012 ICC arbitration revolved around the (unconsummated) purchase of Sural's interest and the valuation thereof (see Memorial, ¶ 204, fn. 451)	<i>and Alutrint's treatment of CMEC's claim"</i> ²⁵ and any information which shows " <i>the State's intention and strategy in relation to the review of CMEC's claims and the settlement thereof</i> " ²⁶

27. These shifting positions are irreconcilable. Both proceedings adopted the IBA Rules as guidance,²⁷ which provide for consistent standards on "*possession, custody or control*", "*legal impediment or privilege*", and "*special political or institutional sensitivity*". **The State cannot credibly assert that documents previously produced under these same standards are now categorically unavailable or privileged.**
28. If the State was able to produce extensive Alutrint materials in 2013 when there was an active dispute with an ex-joint venture partner, it is implausible that it cannot do so now when that dispute has long been settled and that former partner has closed shop.
29. A related and important point is that, while the State speculates about uncertainty "*in respect of Alutrint's retention of documents*"²⁸ or "*with respect to the recovery of documents from Alutrint*",²⁹ it avoids the obvious questions: Why not consult the ICC case files, which contain a substantial volume of Alutrint documents already compiled? And what is the extent of Alutrint documents the State already holds – whether from the ICC proceedings or otherwise – that it can retrieve on its own?
30. Similarly, on the issue of political sensitivity, the State's prior production of Cabinet documents without invoking political sensitivity strongly suggests that there is no compelling and principled basis for withholding or redacting these documents. These documents will be produced and used confidentially within the bounds of arbitration.

²⁵ Respondent's Response to Claimant's Request No. 68.

²⁶ Respondent's Response to Claimant's Request No. 34.

²⁷ C-0354, ICC Case No. 18799/VRO/AGF/ZF, Terms of Reference, 5 June 2013, ¶ 49 (2010 IBA Rules); Procedural Order No. 1, §15.1 (2020 IBA Rules). The changes between the 2010 and 2020 versions of the IBA Rules do not involve the articles now in issue.

²⁸ Respondent's Preliminary Remarks, ¶ 43(2).

²⁹ Respondent's Preliminary Remarks, ¶ 43(3). In response, the Claimant notes that the Respondent merely points to potential archival inconvenience but offers no evidence of genuine inaccessibility.

31. As for privilege, the State's current blanket assertion of unspecified privilege marks a sharp departure from the targeted, document-by-document approach it adopted in the ICC Proceedings. In particular, the precedent of producing Cabinet Minute that recorded the State's offer, valuation, internal assessment, and negotiation mandate is instructive: several of the documents now requested by CMEC seek similar information in a comparable context.³⁰ The Tribunal should therefore scrutinise the Respondent's privilege claims with particular care (as further discussed below).

General Replies to the Respondent's Objections to Document Production

32. In Preliminary Remarks, ¶¶ 4–63, the Respondent refers to most of the grounds enumerated in the IBA Rules to formulate its objections to production. However, its interpretation and application of those standards are neither accurate nor properly explained. The Claimant will address them in turn below.
33. It is equally important to note what it did not raise: **the Respondent did not suggest the loss or destruction of any requested documents** (IBA Rules, Article 9.2(d)). This now confirms what was anticipated in the Claimant's General Observations, ¶ 2.

"In the possession, custody or control" of the requested party (and not of the requesting party)³¹
(IBA Rules, Article 3.3(c))

34. The Respondent's arguments regarding "possession, custody or control" are summarised below:
- (a) In relation to Alutrint documents, the Respondent contends that Alutrint is a third party to this arbitration and "*Alutrint's documents are not the Respondent's documents*".³²
 - (b) In relation to EMA documents, the Respondent states that "*T&T would have no objection in principle to making requests from the EMA for documents, so long as the requests were narrowly confined and strictly necessary*" (emphasis added).³³
 - (c) The Respondent further asserted that "[m]any of the documents requested are documents which are, or should be, already in CMEC's possession".³⁴

³⁰ See, e.g., Claimant's Requests Nos. 34-36 (which request Cabinet Minutes recording the State's establishment of a negotiating team/committee for CMEC's claim issue).

³¹ This section responds to Respondent's Preliminary Remarks, ¶¶ 38-48.

³² Respondent's Preliminary Remarks, ¶ 42.

³³ Respondent's Response to Claimant's Request No. 16.

³⁴ Respondent's Preliminary Remarks, heading above ¶ 44.

The State's Possession, Custody or Control

35. It is instructive to briefly clarify the meaning of the phrase "possession, custody or control" – particularly the concept of "control" – under the IBA Rules. The Khodykin commentary, which the Respondent itself cites as a primary authority, provides the following guidance:
- (a) "The idea behind the formula adopted in the IBA Rules was to capture all situations where the party to whom the Request to Produce is addressed can, in practice, obtain a requested document."³⁵
 - (b) "A common sense approach" applies: "The essential point is that control is not a technical concept, but rather a practical one which should be liberally interpreted and applied."³⁶
 - (c) In the case of third party documents, the test may be framed as whether "*the relationship between the two entities is such that if the party to the arbitration asks for the documents to be made available that request will be met*."³⁷ Further, within a corporate structure, "documents will usually be understood to be within the control of the party if held by a wholly/majority owned subsidiary".³⁸
 - (d) In less clear situations, "*for a party to claim that documents are not in its control, it must have made 'best efforts' to obtain documents that are in the possession of persons or entities with whom or which the party has a relevant relationship*."³⁹
36. In a similar vein, the investment arbitration tribunal in *Nord Stream*, when dealing with arguments contending lack of full or sole control, ordered that the requested party use its *best efforts* to obtain and produce the requested documents in accordance with Article 3.10 of the IBA Rules.⁴⁰
37. Applying the above (well-accepted) guidance to the present case:
- (a) The Respondent should search for and produce the requested Alutrint documents,

³⁵ **CL-0155**, '6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 6.168 (emphases added).

³⁶ *Id.*, ¶ 6.180 (emphases added).

³⁷ *Id.*, ¶ 6.189.

³⁸ *Id.*, ¶ 6.190.

³⁹ *Id.*, ¶ 6.195, citing **CL-0159**, *Clayton/Bilcon v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 8, 25 November 2009, ¶ 1(h) (emphasis added).

⁴⁰ **CL-0160**, *Nord Stream 2 AG v. The European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), 12 July 2021, ¶ 12.

as it is, as a matter of fact, in possession, custody or control of Alutrint's documents.

- (b) The Respondent should also use its best efforts to obtain and produce the requested EMA documents, to the extent that those documents are held by the EMA rather than directly by the Respondent.

ALUTRINT DOCUMENTS

- 38. There is overwhelming evidence establishing that the Respondent has possession, custody or control of Alutrint's documents. Without needing to engage in any substantive debate over whether Alutrint's conduct is attributable to the State, the following facts clearly demonstrate that Alutrint's documents are fully accessible to the Respondent:
 - (a) the Respondent's prior production of extensive Alutrint documents in the ICC Proceedings;
 - (b) the Respondent's submission of Alutrint documents as R- exhibits (**R-0004 to R-0008**) in this arbitration; and
 - (c) the Respondent's ability to search for and produce discrete Alutrint documents at will (Requests No. 84-85 and 108-110).
- 39. The Respondent's emphasis on Alutrint being a non-party to this arbitration or being minority-owned by a third party is misplaced. Indeed, as noted in ¶ 35(c) above, majority shareholding alone is usually sufficient to establish control for the purposes of the IBA Rules. Moreover, in the specific case of Alutrint, the alleged 40% shareholder, Sural, has no participation in and no access to Alutrint's documents and is no longer in business: ¶¶ 14 and 28 above are repeated.
- 40. For completeness, the Respondent's reliance on *Waste Management v. Mexico*⁴¹ is misplaced and misleading. In that case, the respondent State sought direct disclosure from a non-party (Setasa). The claimant objected, on the basis that direct production from Setasa could be construed as a waiver of Setasa's confidentiality obligations, which had been the subject of prior litigation between them. The claimant instead offered to request the documents from Setasa and produce them to the respondent. The facts are entirely distinguishable. It suffices to point out that, here, neither Party will request any documents from Sural.

EMA DOCUMENTS

- 41. The Claimant takes note of the Respondent's stated willingness to requests documents from the EMA. The Claimant adds that such requests should be made and followed up

⁴¹ **CL-0157**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Procedural Order No. 2 Concerning Disclosure of Documents, 27 November 2002.

on a best-efforts basis, in line with the established arbitral practice as well as Article 3.10 of the IBA Rules.

42. The Respondent's self-imposed standard of "*strictly necessary*" is invalid and improper. The IBA Rules do not distinguish between documents held directly by the requested party and those held by third parties under its control. The Respondent cannot unilaterally raise the threshold for production beyond what the IBA Rules require.

CMEC's Possession, Custody or Control

43. Another thread of the Respondent's objection is directed at the Claimant's representation in General Observations, ¶ 14(b) (that the requested documents are not in its possession, custody or control). The Respondent challenges this representation without offering any substantive basis to do so.
44. The Claimant has conducted a diligent and comprehensive search for relevant documents over the course of several months. This is evidenced by the substantial volume of documents it has already produced – over 600 factual exhibits with its Memorial and over 5,000 supporting documents with its expert reports. These efforts stand in stark contrast to the Respondent's minimal 11 exhibits.
45. As part of this preparation process, CMEC has verified its records against contemporaneous references and identified further relevant and material documents that are not in its files but are reasonably believed to have been retained or recorded by the State or its agencies. CMEC's ability to pinpoint specific documents in its requests (and explain their connections with other contemporaneous events) is a direct result of this rigorous effort – not an indication that those documents are in its possession.
46. Furthermore, in some instances (such as Requests Nos. 95-97, which the Respondent cited as examples), the requests are specifically aimed at addressing evidentiary gaps raised by the Respondent. These are not speculative or duplicative requests; they are targeted efforts to complete the factual record in areas where the Respondent's expert identified a need for further or alternative records.
47. In the circumstances, there is no reason to doubt CMEC's good faith representation that the requested documents are not in its possession, custody, or control.

"Legal impediment or privilege"; "commercial or technical confidentiality"; "special political or institutional sensitivity"⁴²

(*IBA Rules, Articles 9.2(b), 9.2(e), 9.2(f), 9.4*)

⁴² This section responds to Respondent's Preliminary Remarks, ¶¶ 56-63, and its repeated claim of Cabinet deliberative privilege and political sensitivity in Requests Nos. 25-37.

48. As an overarching comment, the Respondent's approach to privilege claim is both legally flawed and procedurally improper.
- (a) In Preliminary Remarks, ¶¶ 56-63, it briefly lists legal advice privilege, litigation privilege, without prejudice privilege, and commercial confidentiality, but fails to explain their purpose, scope and limitations.
 - (b) Its reasoning in individual requests is equally if not more deficient, relying on vague and conclusory statements that the documents are "*inevitably*", "*virtually certainly*", "*plainly*", "*clearly*", "*obviously*" or "*on their face*" or "*by their nature*" privileged – without any substantiation.
 - (c) Worse still, in most cases, the Respondent fails to specify the applicable privilege and instead indiscriminately invokes multiple or all types of privilege over entire categories of documents.
49. As a result, the Respondent's privilege objections are so inadequately formulated that they lack the clarity required for meaningful engagement.
50. Nonetheless, in the interest of avoiding unnecessary delay, CMEC sets out below its general position on the procedural and substantive requirements for asserting privilege.

Procedure and Process

51. The burden of establishing privilege lies squarely with the party asserting it. That party must demonstrate that the privilege applies to *each* document withheld or redacted.⁴³
52. Where a party fails to "*identify the specific document(s) or portion(s) thereof containing privileged information, as well as the legal basis for the assertion of privilege*" (emphasis added), the objections fall to be rejected.⁴⁴
53. Redaction of privileged information is the default approach, unless the withholding of an entire document can be specifically justified. As the *Gran Colombia* tribunal put it:⁴⁵

For avoidance of doubt, considerations of legal privilege are to be made with reference to particular passages of a document, and not extrapolated – unless appropriate – to entire documents. Thus, where only a portion of a document

⁴³ **CL-0156**, '12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 12.144; **CL-0161**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, p. 35 (No. 42).

⁴⁴ **CL-0160**, *Nord Stream 2 AG v. The European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), 12 July 2021, ¶ 10.

⁴⁵ **CL-0162**, *Gran Colombia Gold Corp. v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 11 on the Parties' Requests for Documents, 28 September 2021, ¶¶ 8, 9.

meets the definition set out above, the Parties are expected to produce the other portions of the document containing no privileged information.

[...] The Tribunal also expects that privilege determinations will be based on counsel's own independent review of materials and not simply a deferral to their clients' judgment regarding privilege issues.

54. In this case, a document-by-document and paragraph-by-paragraph approach to privilege is expressly contemplated in paragraph 15.6 of Procedural Order No. 1, which provides that:

If a party considers that certain responsive documents in its possession, custody or control (or certain portions thereof) should not be produced on the grounds of a legal impediment or privilege, or commercial or technical confidentiality, or special political or institutional sensitivity, that party shall at the same time of production of documents pursuant to §§15.2.3⁴⁶ and/or 15.2.6,⁴⁷ as applicable, submit to the other party (a) a log identifying such documents (or categories of documents) and the grounds for withholding and/or (b) redacted versions of such documents identifying the contents being redacted and the grounds for redaction. Any such withholding or redactions shall be subject to challenge by the other party. The challenge shall as required be submitted for a decision by the Tribunal.

55. The Respondent's current blanket claims of privilege across numerous categories of requests are therefore both procedurally defective and legally untenable.
56. Accordingly, in respect of requests where the Respondent has asserted but not substantiated the application of one or more forms of privilege, the Tribunal should **grant** the request (unless satisfied that another exclusionary ground applies).
57. In making production, to the extent that the Respondent remains of the view that any specific responsive document or certain portion thereof is privileged (having regard to the Tribunal's guidance in its decisions and based on counsel's independent review), it must provide sufficient substantiation via a privilege log.
58. To facilitate the process and avoid further delay in CMEC's access to relevant evidence, the Claimant has prepared two template privilege logs for the Respondent's use:
- (a) **Annexure A – Log of Withhold Documents:** for documents withheld in their entirety ; and

⁴⁶ Paragraph 15.2.3 refers to the voluntary production by a Party: "*each party shall produce to the other party those documents requested in its possession, custody or control as to which it does not object*".

⁴⁷ Paragraph 15.2.6 refers to the ordered production by a Party: "*each party shall produce to the other party those documents in its possession, custody or control ordered to be produced by the Tribunal*".

- (b) **Annexure B – Log of Redacted Documents:** for documents produced with redactions.

59. The level of detail in the template privilege logs is consistent with past arbitral practice⁴⁸ and is designed to ensure that both the Claimant and the Tribunal have adequate information to evaluate the validity of any privilege claim.

Preliminary Question: The Applicable Law, Rules, and Guidance

60. As a preliminary matter, the issue arises as to which body of law governs the determination of legal privilege. In international investment arbitration, the IBA Privilege Task Force has concluded that tribunals generally find it appropriate to consider principles of international law when assessing whether a document is privileged, with the IBA Rules serving as guidelines.⁴⁹

61. For instance, in *Latam Hydro v. Peru*, when determining the existence of a legal impediment or privilege, the tribunal observed that:⁵⁰

it is constituted under international law, and as such **must respect general principles of international law** in the conduct of international arbitration proceedings. **This includes the Tribunal's duty to uphold due process, as well as the need to maintain fairness and equality as between the Parties,** in the specific circumstances of this case. Where provisions of national law have been invoked by the Parties as the basis for a privilege claimed, the Tribunal shall also be guided by the **wording and rationale of these provisions** when reaching its decisions under PO 2 and the IBA Rules.

62. National rules regarding privilege may be considered within investment arbitration tribunals' general discretionary power, but they are rarely adopted as the proper law.⁵¹

63. In the present case, in addition to general principles of international law, the Tribunal is further guided by:

- (a) the ICSID Arbitration Rules, Rules 3 and 37: which impose general duties to treat the parties equally and provide each party with a reasonable opportunity to present its case, and consider all relevant circumstances when deciding contested document requests;

⁴⁸ **CL-0161**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, pp. 28-29 (No. 25).

⁴⁹ *Id.*, p. 206 (¶ 5).

⁵⁰ **CL-0163**, *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Procedural Order No. 4 on the Production of Documents referred to in the Parties' Privilege Logs, 3 May 2021, ¶ 14 (emphasis added).

⁵¹ **CL-0161**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, p. 207 (¶ 6).

- (b) PO1, § 15.2.5: which requires the Tribunal to have regard to all relevant circumstances and to refer to the IBA Rules when deciding contested document requests; and
 - (c) the IBA Rules, Articles 9.2(b) and 9.4: which offer non-binding guidance on what may constitute legal impediment or privilege.⁵²
64. A recurring and overriding theme across these principles and rules is the emphasis on **fairness** and **equality**. These are precisely the elements conspicuously absent from the Respondent's objections. To permit the sweeping and unsubstantiated claim of blanket privilege advanced by the Respondent would result in a severe imbalance between the Parties and would unduly deprive CMEC of its right to a reasonable opportunity to present its case.
65. Another critical and related consideration missing from the Respondent's objections is the importance of **Party expectations at the time the alleged privilege arose** – described as the "*guiding principle*" in the official commentary to the IBA Rules.⁵³ It is fundamentally unfair to make retrospective assertions of privilege over documents and communications that were not intended to be privileged at the time of their creation.

Legal Advice Privilege

66. Article 9.4(a) of the IBA Rules contemplates what is commonly referred to as the legal advice privilege. The Respondent places more emphasis on the documents limb, i.e. documents allegedly created by it in connection with, and for the purpose of, obtaining legal advice.

⁵² The elements to be taken into consideration are:

- (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
- (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;
- (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;
- (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and
- (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.

⁵³ **CL-0164**, 'Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration', 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force, January 2021, p. 28.

67. The parameters of legal advice privilege include:⁵⁴
- (a) Legal advice privilege protects confidential communications between a client and its legal adviser. Where confidentiality is lost – for example, through disclosure to a third party – the privilege is waived.
 - (b) Legal advice privilege applies only to documents created for the dominant purpose of obtaining legal advice. It is well-established that pre-existing documents are not generally protected by legal advice privilege. In other words, this form of privilege does not extend to underlying facts, contemporaneous analyses, etc. that were created independently of any intention to seek legal advice. The subsequent provision of such documents to a legal advisor as background material will not retrospectively confer privilege.
68. As a general observation, CMEC notes that the Respondent has provided no indication (let alone substantiation) of when legal counsel was involved to review CMEC's claim. This casts doubt on the applicability of legal advice privilege generally.

Litigation Privilege

69. Although not explicitly referenced in the IBA Rules, the IBA Privilege Task Force has found that the concept of litigation privilege is recognised across many jurisdictions. For a communication to attract litigation privilege, it must be:⁵⁵
- (a) between the counsel (acting in a professional capacity) and the client, or between them and a third party (or be a document created by or on behalf of the client or the client's lawyer);
 - (b) made for the dominant purpose of legal proceedings;
 - (c) related to legal proceedings that are either pending (commenced) or reasonably contemplated; and
 - (d) confidential (either expressly or presumed).
70. Further, the IBA Privilege Task Force describes the rationale for litigation privilege as follows: "*to further access to justice; to ensure the proper administration of justice; to facilitate a fair trial; and to promote equality of arms*".⁵⁶

⁵⁴ **CL-0161**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, pp. 129-130.

⁵⁵ *Id.*, p. 10.

⁵⁶ *Id.*, pp. 9-10.

71. CMEC makes the following observations regarding the scope and limitations of litigation privilege:
- (a) First, there is a *timing* condition: adversarial legal proceedings must be reasonably contemplated (if not commenced). Litigation must be a real likelihood rather than a mere possibility.⁵⁷ ***The existence of a dispute or claim does not, in itself, give rise to a reasonable contemplation of litigation.***
 - (b) Second, there is a *purpose* condition: the document must be created for the dominant purpose of litigation. It is not sufficient that litigation is one of several purposes of equal importance.⁵⁸ More specifically, the dominant purpose may include obtaining advice or information in connection with the conduct of litigation.⁵⁹ ***This does not blanketly cover all internal communications.***⁶⁰ For example, ***commercial discussions, including discussions about commercial settlements, do not fall within the ambit of litigation privilege.***⁶¹
 - (c) Third, there is a *policy* rationale which is aimed at promoting a fair trial and protecting the integrity of adversarial proceedings. This rationale is worthy of note as the Respondent has claimed blanket litigation privilege over all communications and documents relating to the CEC litigation (which was withdrawn by the EMA in 2011 and is impossible of reactivation). There is no proper justification for wholesale withholding on the basis of a litigation that has long ended (in respect of a project that has long been abandoned). Such a position will not protect but obstruct legitimate interests.
72. On a related factual note, CMEC notes that during the decade-long claim negotiations between the parties concerning CMEC's claim, ***all correspondence and communications were conducted on an open basis***, with only two discrete instances of "without prejudice" correspondence: one letter from Alutrint in March 2015 and one from the State in January 2020. This consistent pattern of open communication militates against any assertion that litigation was reasonably contemplated during the relevant period.

Without Prejudice Privilege

73. Article 9.4(b) of the IBA Rules contemplates what is commonly referred to as the without prejudice privilege. Without prejudice privilege is a creature of common law systems

⁵⁷ *Id.*, p. 131.

⁵⁸ *Id.*, p. 131.

⁵⁹ **CL-0165**, *WH Holding Ltd & Anor v E20 Stadium LLP* [2018] EWCA Civ 2652, ¶ 27(ii).

⁶⁰ *Id.*, ¶ 27(v).

⁶¹ **CL-0165**, *WH Holding Ltd & Anor v E20 Stadium LLP* [2018] EWCA Civ 2652, ¶ 18; **CL-0161**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, pp. 131-132.

originating from England and Wales (applicable in jurisdictions such as Trinidad and Tobago) and is rarely addressed and developed in civil law jurisdictions (including China).

74. As such, as noted above, save for two discrete instances, CMEC – as well as the State in dealing with CMEC – conducted all correspondence and communications on an open basis, occasionally involving third parties such as the Chinese Ambassador.⁶²
75. CMEC makes the following further observations regarding the scope and limitations of without prejudice privilege:

Open v. without prejudice

- (a) Where negotiations were conducted on an open basis, a party cannot later unilaterally try to retreat the basis upon which they were made and seek to apply the without prejudice privilege.⁶³
- (b) The Respondent places more emphasis on documents allegedly created by it in connection with, and for the purpose of, settlement negotiations. Several issues arise:
 - (i) The document must be created specifically for the purpose of confidential settlement negotiations, not merely related to them in a general or tangential way.
 - (ii) A vague or hypothetical intention to use the document in some future settlement context is insufficient to attract privilege.
 - (iii) Where the settlement negotiations themselves were conducted on an open basis, this negates any claim to without prejudice privilege over the underlying documents.

Admissions v. relevance otherwise than as admissions

- (c) The IBA Privilege Task Force observes that without prejudice privilege generally excludes evidence of negotiations containing admissions against a party's interests – with the rationale being to encourage good-faith settlement negotiations and avoid protracted and expensive formal proceedings.

⁶² See, e.g., **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-0391**, Letter from CMEC to Ambassador X. Huang 30 December 2014.

⁶³ **CL-0166**, C. Passmore, *Privilege* (5th edn., 2024), ¶ 10-065.

- (d) This observation aligns with English case law, which recognises a number of exceptions to the without prejudice rule where the statements in question are relevant otherwise than as admissions. Notable exceptions include situations where *evidence of negotiations may be admissible as giving rise to an estoppel, or to explain delay or acquiescence (especially when – as is the case here – the rights and wrongs of the delay are in issue)*.⁶⁴

76. In conclusion, in the circumstances of this case, without prejudice privilege either did not attach in the first place, or does not preclude the admission of relevant statements and communications that bear upon the issues of delay, prescription, estoppel, and acquiescence.

Cabinet Deliberative Privilege & Special Political Sensitivity

77. This has been largely addressed in earlier parts of CMEC's Overall Replies. CMEC briefly adds two further points:

- (a) Deliberative privilege protects only documents that are both pre-decisional and deliberative in nature. In the case of Trinidad and Tobago, neither Cabinet Minutes nor Cabinet Notes reveal anything of the deliberative process. More generally, past ICSID tribunals also found that no special political sensitivity would attach to documents presented to Cabinet in preparation for its deliberations..⁶⁵
- (b) The Respondent's reliance on *Attorney-General v Jonathan Cape Ltd*⁶⁶ (an authority on Cabinet joint responsibility) is therefore misplaced. However, it is instructive to note Lord Widgery CJ's observation in that case: Cabinet privilege is not perpetual, and will lapse with the passage of time, particularly where its continued application no longer serves to protect the integrity of Cabinet discussions.

Waiver of Privilege, Including the Collateral Waiver Rule

78. The issue of waiver of privilege is as critical as the existence of privilege itself. Once privilege is waived, it cannot be reclaimed.
79. Article 9.4(d) of the IBA Rules sets out a non-exhaustive list of circumstances in which privilege may be deemed waived, including consent, earlier disclosure, affirmative use, and a catch-up "otherwise".

⁶⁴ **CL-0167**, *Unilever Plc v The Procter & Gamble Company* [1999] FSR 849, pp. 352-353.

⁶⁵ **CL-0168**, *Merrill & Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Decision of the Tribunal on Production of Documents in Respect of Which Cabinet Privilege Has Been Invoked, 3 September 2008, ¶ 20.

⁶⁶ **CL-0158**, *Attorney-General v Jonathan Cape Ltd* [1976] QB 752.

80. Two points are worth noting:

- (a) First, where privilege is waived with respect to a document or part of that document, the waiver may extend to the entire document or other documents that concern the same subject matter. This is known as the collateral waiver rule (or subject matter waiver), which is guided by considerations of fairness.⁶⁷
- (b) Second, assuming *arguendo* that some privilege did exist, any disclosure, non-objection or affirmative reliance on privileged information or documents by the Respondent in its Counter-Memorial constitutes a waiver. For example, the Respondent's positive reliance on the Attorney General's opinion that the prospects of a successful CEC appeal were not strong triggers a waiver that extends to any other legal opinions or communications concerning the merits of the appeal. Similarly, the Respondent's failure to object to references to settlement negotiations or offers – and indeed its decision to contest the details of the US \$15 million good faith money offer – either confirms their open nature or constitutes a waiver of any privilege that might otherwise have attached.

Commercial Confidentiality

- 81. The Respondent's purported reliance on Article 9.2(e) of the IBA Rules, which concern compelling commercial or technical confidentiality, is misconceived and can be disposed of summarily.
- 82. This head of confidentiality is intended to protect information that has an economic value, such as confidential business records or models, technical formulae, know-how, trade secrets, and other forms of proprietary information.⁶⁸ The rationale is to prevent unfair competitive advantage or economic harm arising from disclosure.
- 83. Here, the Respondent has misapplied commercial confidentiality to completely irrelevant scenarios (e.g. by asserting confidentiality over documents from the ICC Proceedings⁶⁹). Confidentiality alone is not, in and of itself, a ground for excluding relevant relevance. Documents produced in this arbitration are already subject to confidentiality protections and may be used only in connection with the arbitration: IBA Rules, Article 3.13.

⁶⁷ **CL-0156**, '12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶¶ 12.211, 12.217, fn. 196.

⁶⁸ **CL-0156**, '12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 12.313.

⁶⁹ Respondent's Response to Claimants Request No. 6.

"Sufficient relevance to the case or materiality to its outcome"⁷⁰

(IBA Rules, Articles 3.3(b), 9.2(a))

84. The difference under this limb lies primarily in the understanding and application of the "materiality" requirement.
85. CMEC agrees in principle with the test cited by the Respondent in Preliminary Remarks, ¶ 52, which refers to the following passage from the Khodykin commentary:⁷¹

The document(s) must add something to the evidence on a factual issue that is on a critical path to a determination of the dispute. If it is clear that the document will have no bearing on the matters to be decided then the requirement is not met.

86. A helpful paraphrase to understand the "*add something to*" standard is if the requested document "*is needed to allow complete consideration of the factual issues from which legal considerations are drawn*".⁷² As observed by Khodykin, the notion "*complete consideration*" is a "*distinguishing factor*" as compared to the requirement of relevance.⁷³
87. In practical terms, this means that a document need not be outcome-determinative on its own – indeed, in a factually complex dispute (such as the present case), that is rarely the case. Rather, the document should form part of a broader evidentiary mosaic that contributes to the determination of the issues in dispute.
88. An important related point is that, at this stage of the proceedings, the Tribunal's assessment of relevance and materiality is conducted on a *prima facie* basis. As noted in the Khodykin commentary, there is "*widespread acceptance*" that "*a tribunal's assessment of a requested document as being prima facie relevant and material is sufficient to satisfy the requirements of Article 3.3(b) and to justify an order for production*".⁷⁴ In practice, this means that the Tribunal should consider whether it is **likely** that the document in question is relevant and material to the case as articulated at the time.⁷⁵
89. Lastly, in light of the Respondent's pattern of making speculative assertions, it is relevant to recall the observation by the *Clayton v. Canada* tribunal: a tribunal should not accept,

⁷⁰ This section responds to Respondent's Preliminary Remarks, ¶¶ 49-55.

⁷¹ **CL-0155**, '6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 6.102 (emphasis added).

⁷² *Id.*, ¶ 6.103.

⁷³ *Id.*, fn. 104 (p. 70).

⁷⁴ *Id.*, ¶ 6.125.

⁷⁵ *Id.*, ¶ 6.128.

as a ground for objecting to a request, an unsubstantiated assertion by the requested party – made before it has reviewed the files – that a particular request is not relevant or material.⁷⁶

"Narrow and specific"; "unreasonable burden"; "procedural economy, proportionality, fairness or equality"⁷⁷

(IBA Rules, Articles 3.3(a)(ii), 9.2(c), 9.2(g))

90. CMEC address these grounds together as they are interrelated and involve overlapping considerations. The Respondent also adopted a similar approach in Preliminary Remarks, ¶ 11.
91. An essential point to emphasise at the outset is that these standards are not to be applied in an abstract or mechanical manner. Their application is case-specific and requires a degree of flexibility and a balancing exercise between competing interests.⁷⁸
92. The assessment of whether a request is unreasonably burdensome involves consideration of proportionality; namely, *"whether the alleged burden is (or is not) disproportionate to the likely evidential value of the requested evidence and/or the value of the dispute"*.⁷⁹
93. Proportionality and procedural economy – two sides of the same coin – are considerations aimed at ensuring an efficient and economic arbitration. These standards are relative and should be assessed in light of *"both the financial or commercial value of the matters in dispute and its complexity"*.⁸⁰ In practical terms, *"[t]he amount at stake is normally a good starting point to assess the proportionality of costs likely to be incurred"*.
94. Importantly, the objectives of proportionality and procedural economy must not be used as a pretext to avoid the review of a large volume of documents where such review is necessary for a proper determination of the dispute.⁸¹ Put differently, the desirability of an economical resolution of dispute cannot override the fundamental requirements of fairness and equality.

⁷⁶ **CL-0159**, *Clayton/Bilcon v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 8, 25 November 2009, ¶ 1(c).

⁷⁷ This section responds to Respondent's Preliminary Remarks, ¶¶ 1-2 and 4-11. As for Preliminary Remarks ¶¶ 12-37 (which set out the Respondent's specific objections to the Claimant's Requests Nos. 6, 46, 47, 69 and 71), given that they are request-specific, CMEC will address them directly in the document request schedule.

⁷⁸ **CL-0156**, '12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 12.313.

⁷⁹ *Id.*, ¶ 12.253.

⁸⁰ *Id.*, ¶ 12.310.

⁸¹ *Id.*, ¶ 12.314.

95. Against these principles, it is important to contextualise the Respondent's objections by reference to the specific circumstances of this case:
- (a) This is a factually complex dispute spanning over two decades, covering the full lifecycle of the Project – from inception and operation to termination and post-termination negotiations – across five successive Trinidad and Tobago administrations.
 - (b) This is a high-stakes arbitration, with damages claimed in the range of US \$100 million.
 - (c) The Parties agreed a fairly long document production procedure (of over three months) to account for the workload and complexity.
 - (d) CMEC has borne a disproportionate burden in establishing the factual record. It has by far submitted over 600 factual exhibits and more than 5,000 supporting documents, reflecting the extensive time and resources devoted to evidence collation.
 - (e) In contrast, the Respondent has engaged minimally on the factual front and has not voluntarily submitted any contemporaneous evidence, save for five Alutrint letters.
96. CMEC submits that the Respondent's objections on grounds of alleged burden and proportionality must be assessed in light of this existing imbalance in the Parties' contributions to the evidentiary record, the Respondent's limited engagement with factual disclosure, and the overall complexity and value of the dispute. This is especially so given that in some instances the Respondent appears to have overstated the burden of the search.⁸²
97. As for the requirement that requests be "narrow and specific":
- (a) The correct approach is the one described in Preliminary Remarks, ¶ 7, i.e. whether the description is such that the requested party can judge whether a particular document falls within the scope of a request "*without too much difficulty*".⁸³
 - (b) The "*high degree of specificity*" and "*allow the other party to divine precisely*" approach, as referred to in Preliminary Remarks, ¶ 6, is disapproved in the Khodykin commentary.⁸⁴

⁸² See, e.g., Claimant's Replies in Requests Nos. 5, 40, 78, 98, 100.

⁸³ **CL-0155**, '6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 6.60.

⁸⁴ *Id.*, ¶ 6.59.

- (c) The Respondent's demand for a "*precise cope*" – including linguistic precision between individual words⁸⁵ – is out of line with the IBA Rules and the accepted arbitral practice and is simply unachievable in some instances. As the IBA Task Force has noted, some relevant and material documents "*may not be capable of specific identification*"; a description that identifies "*with some particularity the nature of the documents sought and the general time frame in which they would have been prepared*" may qualify as narrow and specific.⁸⁶ The Respondent should not strain to find ambiguity when the request, read as a whole, enables a practicable search "without too much difficulty".
 - (d) The standard of narrowness and specificity similarly has a degree of flexibility and should be applied contextually, taking into account the factual circumstances of the dispute and the amount of information available to the requesting party.
98. In fact, CMEC has approached its document requests with much care and diligence:
- (a) It has formulated its requests with clear references to contemporaneous documents, events, or communications wherever possible. Time ranges are specifically included where ambiguity might otherwise arise; in other cases, the relevant time period is self-evident from the context of the request.
 - (b) It has consistently sought to identify individual documents first, resorting to broader formulations only where individual documents have been exhausted and where it reasonably believes further similar documents exist.
 - (c) It has consciously avoided vague formulations such as "relating to a broad subject matter", and instead proposed formulations designed to capture only substantively relevant documents.
99. Nonetheless, in the continued spirit of collaboration, CMEC offers (and has implemented in the document request schedule that follows) the following additional clarifications and/or particularity with respect to the contested requests, wherever possible:
- (a) adding annotations pinpointing the exhibit or page numbers of the requested documents in the ICC Proceedings (which documents are readily retrievable from an already compiled exhibit bundle in the direct possession of the State, with negligible burden);

⁸⁵ Respondent's Preliminary Remarks, ¶¶ 25, 26.

⁸⁶ **CL-0164**, 'Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration', 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force, January 2021, p. 10.

- (b) explicitly specifying the time frames during which the requested documents should have been prepared or otherwise come into existence; and/or
 - (c) to the extent that the State contends linguistic ambiguity or other similar objection on semantic or interpretive grounds, proffering alternative formulations and/or explanations about the intended scope of the documents requested (and those not sought).
100. CMEC trusts that its document requests have been described in sufficient detail and with sufficient specificity, in compliance with the language and spirit of the IBA Rules. The number and scope of the requests are commensurate with the amount at stake in this case, as well as its complexity and temporal span. The formulations have been carefully drafted and are capable of being understood reasonably.

CMEC Has Full Right to Engage the Respondent's Defence, Including Through Document Requests⁸⁷

101. Turning last to the Respondent's contention that CMEC has "*re-argued its case*" through the document requests, this characterisation is entirely improper and misconceived.
102. The document production phase immediately follows the Respondent's submission of its Counter-Memorial – a lengthy 345-page pleading that advances numerous factual allegations and legal arguments, yet is accompanied by minimal contemporaneous evidence. CMEC is fully entitled to engage with the Respondent's defence, including by requesting documents that may contradict or contextualise the Respondent's assertions. This is not a re-argument of CMEC's case; it is a legitimate and necessary exercise of its procedural rights to test the Respondent's assertions and prepare for full rebuttal in the Reply Memorial.
103. The following part from the Khodykin commentary speaks directly to the point:⁸⁸

A party may have legitimate reasons for wishing to 'flush out' the available evidence on a particular point. **An early assessment of that evidence (*or its non-production/existence*) may affect the nature of further steps taken in the arbitration, with consequential impact upon costs and efficiency.** Dealing with the matter in this way may also **prevent the tactical late production of evidence that takes the requesting party by surprise.** In addition, where the party with the burden of proof has produced documents on the relevant issue that assist it in relation to discharging that burden, **there may nonetheless be other documents on the same issue**

⁸⁷ This section responds to Respondent's Preliminary Remarks, ¶¶ 69-74.

⁸⁸ **CL-0155**, '6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]', in R. Khodykin *et al.*, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 6.134 (emphases added).

that may help its opponent to raise the evidential burden that the party with the burden of proof has to surmount.

104. These observations are particularly relevant in this case. CMEC is due to file its second and final round of written submissions after the close of document production. If documents underlying the Respondent's defence – or the absence thereof – are not disclosed at this stage, CMEC will be forced to respond to a series of unsupported assertions and unsubstantiated arguments at significant costs. It will also be placed at a disadvantage if the Respondent tactically discloses relevant evidence only in its Rejoinder, and will have no opportunity to expose or correct any bias created by selective or misleading presentation of evidence.
105. As for the debate over the "*coming out of the blue*" argument, the contemporaneous statements speak for themselves. There are many more similar acknowledgements of liabilities to CMEC compiled in Memorial, Annex 4. Furthermore, the State's internal assessment documents which are now requested are directly relevant to this issue and will reveal whether this argument has any substance at all – see ¶¶ 22-23 above.
106. CMEC's General Observations, ¶¶ 15-17, continue to apply *mutatis mutandis* with respect to its replies.

CLAIMANT'S DOCUMENT REQUEST SCHEDULE

Document Request No	1
A. Documents or category of documents requested	The final and complete version of C-0601, i.e. the Phase 1 Hatch report which "<i>determine[d] a range for engineering cost as percentage of contract value based on industry standard for the project</i>" [C-0601, p. 2]. CMEC estimates that this report was produced / submitted sometime <u>between April 2013</u> (after Alutrint's instructions, see Request No. 3) <u>and October 2013</u> (before Hatch's Phase 2 report, see Request No. 2).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC has pleaded that Alutrint engaged Hatch to assess CMEC's completed engineering works for the Project and that Hatch submitted its final evaluation report containing a contemporaneous valuation of CMEC's engineering claim in or around October 2013: Memorial, ¶¶ 235, 373, 379, 381, 383. 2. Without denying the existence of the Hatch report, the State specifically instructed its engineering expert, Mr Chris Hillier, to "<i>not review it when producing [his] report</i>". Charles Russell Speechlys' instructions in this regard are reproduced below [CH ER, App. A1, ¶ 3.3]: <i>"Both CMEC and T&T are instructing independent experts to assess the quantum of CMEC's claim, should it succeed on liability. Neither party is relying on the Hatch Report as evidence of the value of CMEC's claim and it is therefore not relevant to, and should not figure in, either party's assessment of quantum. As such, we consider that the Hatch Report (document DC-0008) [] should not form part of your assessment, and you should therefore not review it when producing your report."</i> 3. CMEC strongly disputes the appropriateness of this instruction. The only reason CMEC has not so far relied on the Hatch report "<i>as evidence of the value of CMEC's claim</i>" is that it did not possess a copy of the Hatch report (save for a draft version of the unfinished Phase 1 report which has been submitted as C-0601 and DC-0008). 4. CMEC's position is that the Hatch report is highly relevant and material to assist the Tribunal in arriving at a fair determination of the value of CMEC's completed engineering works. Reasons include:

	a. Hatch's valuation is contemporaneous and conducted pre-dispute. Subject to any Alutrint-serving bias (given that the report was commissioned by Alutrint), it likely presents a more balanced and objective assessment of CMEC's engineering claim, both in terms of the methodology applied and the quantum reached. b. Hatch's valuation is also likely more technically accurate and industry-specific, having due regard to the unique features of aluminium smelter engineering. Hatch is a globally recognised consulting firm with specialist expertise in the aluminium industry and a proven track record in delivering complex aluminium projects worldwide [C-0536, pp. 19-21]. In contrast, Mr Chris Hillier notably has no experience in aluminium projects at all [CH ER, App. A2], not least evidenced by his (improper) "vacuum cleaner" analogy to an aluminium smelter [CH ER, ¶ 2.8.3]. c. Furthermore, Hatch's valuation is likely more fact-based, having considered all relevant circumstances of the Project. In addition to its general industry expertise, Hatch had direct involvement and first-hand knowledge of the Project: it was involved as early as 2003 to produce a pre-feasibility study [C-0014, ¶ 57], conducted a comprehensive review of CMEC's (330kA) preliminary design in 2009 [C-0217], and was finally engaged to evaluate CMEC's engineering claim following the Project's termination [C-0601; C-0355]. 5. The Phase 1 Hatch report should be read together with the Phase 2 report (which is requested next) for a complete and comprehensive understanding of Hatch's analysis. The Phase 1 report is said to estimate CMEC's engineering cost as a percentage of the EPC Contract price based on the industry standard, while the Phase 2 report reflects an updated assessment following a bottom-up verification of the engineering performed [C-0601, p. 2]. Any differences between the two reports will likely reflect Hatch's adjustments to account for the actual volume of CMEC's work.
C. Responses and/or objections to document request	Not agreed. <u>Materiality & Proportionality</u> The Hatch report is not material to the outcome of the dispute and is likely to frustrate rather than promote procedural economy, proportionality and fairness. CMEC's position in this regard is incoherent and flawed. First, CMEC's request makes reference to the fact that Alutrint commissioned the Hatch report,

and moots the possibility of a pro-Alutrint bias. It then asserts that the Hatch report is likely to be “more balanced and objective” than a report produced by an independent expert who has confirmed their understanding of their primary duty to the Tribunal. This is inconsistent and unhelpful. Both parties have commissioned reports from independent experts on the basis of an overriding duty to the Tribunal, rather than their instructing party. If CMEC believes that the Hatch report, which is subject to no such duty, is likely to be more balanced and objective than its own expert report, this raises serious concerns about CMEC’s instruction of and confidence in its own expert. T&T does not share that same lack of confidence in its expert and instead is happy for the dispute to be resolved by the agreed procedure adopted by this Tribunal (viz, analysis of written reports from appointed experts). CMEC’s concerns about its own expert’s abilities does not justify the inclusion of a further report which could only ever carry minimal evidential weight and which was produced for different purposes (see below).

Secondly, unlike the expert reports of the parties, there is no opportunity to interrogate the authors of the Hatch report through witness testimony or request further information underpinning the report. This further reduces the evidential weight that can realistically be attributed thereto. The Hatch report is a non-independent, outdated report, incapable of proper interrogation in these proceedings, and which relates to some (but not all) of the matters of quantum in dispute, all of which are instead addressed in the appointed expert reports. The Hatch report therefore amounts to information which is duplicative of the expert reports, but less reliable and with a fraction of the evidential weight. It is therefore plainly disproportionate to produce it or include it in these proceedings, particularly where the expert reports (read with their exhibits and appendices) are so voluminous and detailed, and there is a substantial amount of other documentary evidence for the Tribunal to consider. The inclusion of the Hatch report merely adds yet more paper to the pile, without the prospect of materially altering the outcome of the dispute.

Thirdly, introduction of the report risks interfering with smooth running of the arbitral procedure. Either the Hatch report carries no real weight (in which case it is immaterial – see above), or CMEC will seek to argue that it (or aspects of it) should be given weight, indeed *more* weight than aspects of the appointed expert’s reports. Indeed, CMEC has already indicated an intention to seek to undermine Mr Hiller’s report on this basis (see its misplaced and inappropriate comments above). This is inappropriate and will serve only to distract the Tribunal from its task, which is not to adjudge the expert reports by reference to an untested report produced years ago by an unknown author, but to

	adjudge the reports on their merits and following targeted examination by experienced counsel. CMEC's proposed justifications for inclusion of the Hatch report is helpful insofar as CMEC does not even attempt to hide its true purpose, which is simply to override and subvert the evidence of the Tribunal-approved experts. Self-evidently this is inappropriate and must be prevented. Fourthly and relatedly, CMEC's intended deployment of the Hatch report is contrary to and therefore serves to undermine the Procedural Orders made by this Tribunal. The Tribunal has already ordered that the issues concerning quantum be addressed by expert evidence in the form of reports from the appointed experts. CMEC's naked attempt to try these issues, instead, by reference to the Hatch report is subversive and irregular. Fifthly, as demonstrated below, the Hatch report was prepared for the purpose of the contractual claim by CMEC against Alutrint. Claimant's Memorial, ¶453, states "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, <i>not</i> 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, <u>the provisions of these contracts – including their ICC dispute resolution provisions – are entirely irrelevant to this case</u>" (underlining added). Thus, on CMEC's own case, the Hatch report, which concerns the contractual claims, cannot be relevant. <u>Privilege</u> Further and in any event, it is not true that the Hatch report was produced "pre-dispute." Alutrint's letters of 19 and 23 January 2012 terminated the EPC Contracts. Even on CMEC's own case, it terminated the EPC Contract(s) in March 2013. CMEC then notes that the instruction of Hatch by Alutrint appears to have been in April 2013 – directly after CMEC purported to terminate the EPC Contract(s). Far from being "pre-dispute," the strong indication from that chronology is that the Hatch report was commissioned by Alutrint in contemplation of a claim by CMEC (which is also consistent with the wording used in C-0601). Given that, by March 2013, the termination of the Project had already occurred, CMEC's purported termination of the EPC Contract(s) was obviously a precursor to making a claim. Accordingly, as both parties have acknowledged, there were subsequent discussions between CMEC and Alutrint aimed at resolving CMEC's claims for compensation. And in due course, in July 2014, CMEC intimated a claim against Alutrint
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	pursuant to the dispute resolution procedure under the 2008 Contract [C-0047]. In those circumstances, Alutrint can only have commissioned the report in contemplation of CMEC's claims, and specifically in order to assess how it might resolve them directly with CMEC. There is no other sensible reason why Alutrint would need the assessments requested from Hatch. The report is therefore plainly the subject of litigation privilege and T&T requests that the Tribunal exempt it from production, in accordance with Article 9 (2) (b) of the IBA Rules. Further, the specific importance of protecting the confidentiality of documents obtained or produced for the purpose of settlement negotiations – as the Hatch report clearly was – is recognised in Article 9 (4) (b) of the IBA Rules. Hence the Hatch report is also the subject of the “without prejudice” privilege referred to in that provision. T&T does not know how (and the Memorial does not explain: see §373 and footnote 729) CMEC came to have C-0601 in its possession, but the fact that CMEC was not provided with the Hatch reports for either phase clearly demonstrates that Alutrint chose not to share them. That is a further indicator that the reports are privileged, and a clear demonstration that such privilege was never waived. It is not possible for T&T to unilaterally waive Alutrint's privilege over the requested documents, but even if it were, the request is for a privileged document that was created for the purpose of settlement negotiations, and T&T objects to production of the same.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC reiterates the relevance and materiality reasons elaborated in Section B. 3. The Parties remain at liberty to argue for or against the probative value of the valuation methodology or results in the Hatch report. In due course, the Tribunal will form its own view on the evidentiary weight to be accorded to it. However, excluding the report from production – and thereby preventing it from entering the evidentiary record – would deprive the Tribunal of a critical piece of evidence necessary for the fair and informed resolution of the present dispute. 4. This goes against the overriding principle of safeguarding the fairness and equality between the Parties.

	5. As to the arguments of privilege, CMEC refers the Tribunal to its Overall Replies on the scope and limitations of litigation privilege and without prejudice privilege. 6. Neither form of privilege applies to the Hatch report (prepared in 2013). It was not created at a time of reasonable contemplation of litigation ("<i>reasonable contemplation of CMEC's claims</i> [for payment]" is insufficient – on the Respondent's own narrative, CMEC only indicated any intention to commence arbitration in July 2014), nor was it created specifically for the purpose of confidential settlement negotiations (in fact, no negotiation was initiated by Alutrint at all after the submission of the Hatch report). 7. In any event, Alutrint's disclosure of the draft Phase I report has waived any privilege that might have otherwise existed. Fairness requires the disclosure of full report so that the partial content (giving only a limited value to CMEC's work) is not misleading or prejudicial. 8. In short, the Hatch report (in both phases): a. represents a contemporaneous, industry-specific, and fact-verified valuation of CMEC's completed engineering work. It remains highly relevant and material in this case, particularly as engineering is the most heavily disputed component in the quantification exercise; and b. is a pre-dispute technical/commercial assessment which is not legally privileged (or, in any event, any privilege that may have attached has been waived).
E. Decision of the Tribunal	The request is granted.

Document Request No	2
A. Documents or category of documents requested	The Phase 2 Hatch report which evaluated CMEC's engineering claim following "[a] <i>'bottom-up' assessment of the engineering performed by CMEC and the associated cost to be performed in China</i>" [C-0601, p. 2]. CMEC estimates that this report was produced / submitted <u>in or around October 2013</u> as Hatch's onsite design verification exercise was completed in China by mid-October 2013 [C-0361; C-0363].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 1, ¶¶ 1-5. 2. As the Phase 2 Hatch report represents Hatch's final evaluation of CMEC's engineering claim, its importance even exceeds that of the Phase 1 report.
C. Responses and/or objections to document request	T&T repeats the objections given in respect of Request 1 (above).
D. Replies to objections and request for resolution	1. CMEC repeats the replies stated in Request No. 1.
E. Decision of the Tribunal	The request is granted.

Document Request No	3
A. Documents or category of documents requested	Email of 4 April 2013 from Colleen Murray of Alutrint to Rajiv Dhameja of Hatch, which set out (among other things) the three-phase instructions to Hatch to "<i>establish the cost of engineering completed thus far under the EPC contract</i>" [C-0601, p. 1]. To the extent that the instructions to Hatch have been subsequently updated or supplemented, such updated or supplemented instructions should also be produced.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The requested email is referenced, with partial content summarised, in the draft Phase 1 Hatch report [C-0601, p. 2]. 2. The instructions from Alutrint to Hatch (together with any updates or supplements, if any) should be read together with the Hatch report for complete and necessary context. 3. Further, it appears that the 4 April 2013 email may have also recorded some of Alutrint's contemporaneous understandings / acknowledgements of the status of CMEC's engineering work. For example, the draft Phase 1 report says that "[a]ccording to Alutrint" the preliminary designs have been completed and some of the detailed engineering drawings have also been provided [C-0601, p. 1].
C. Responses and/or objections to document request	The instructions are no more relevant or helpful than the Hatch reports themselves. T&T repeats its response to Request 1.
D. Replies to objections and request for resolution	1. CMEC repeats the replies stated in Request No. 1. 2. The instructions' related but distinct relevance and materiality have been explained in Section B above.
E. Decision of the Tribunal	The request is granted.

Document Request No	4
A. Documents or category of documents requested	Letter from Alutrint to CMEC dated 26 July 2013.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This letter was referred to in Alutrint's letter dated 2 October 2013 [C-0361] (in which Alutrint confirmed that it had finalised arrangements with Hatch to conduct the onsite review), and appears to be a response to CMEC's letter dated 8 July 2013 [C-0357] (in which CMEC invited Alutrint for claim negotiations in parallel with Hatch's design verification exercise). 2. This letter should therefore supplement the evidentiary record of the correspondence between Alutrint and CMEC concerning the claim negotiations and/or the design verification process.
C. Responses and/or objections to document request	Not agreed. CMEC requests this document in order to “supplement the evidentiary record of correspondence [between the parties].” That is not a basis for document production. Documents requested must be material to the outcome of the case. CMEC does not even aver that the documents are material to the outcome, much less explain how. Further, this is a document which ought to be in CMEC’s possession. It must therefore also show that it would not be unduly burdensome for T&T to produce it, given that CMEC should be in a position to do so itself (and has not commented on the extent or exhaustiveness of its own searches to that end). It would clearly be unduly burdensome for T&T to produce documents for which the Claimant has not identified any use.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to relevance and materiality</u>, the requested 26 July 2013 letter must have addressed the Hatch review in some detail, because Alutrint's 2 October 2013 letter [C-0361] stated: "<i>we write <u>further to</u> [our letter dated 26th July, 2013]. Please be advised that we have finalised arrangements with HATCH to complete a review of documentation held at your offices</i>" (emphasis added). 3. The letter may, for example, describe the proposed scope or method of the design review and/or the purpose or status of the arrangement with Hatch. It will therefore positively "<i>add something to the evidence</i>" on an issue (here, Hatch's contemporaneous review exercise) that is on a critical path to

	a determination of the dispute – which is the very test the Respondent itself advocates in its Preliminary Remarks, ¶ 52. 4. <u>As to CMEC's possession, custody or control</u>, CMEC repeats its Overall Replies, ¶¶ 43-47. Here, it is apparent that CMEC has conducted a reasonable and diligent search of all correspondence from this period, which is precisely why it was able to identify a specific letter missing from the evidentiary record and establish its connection with other letters and events from the same timeframe. 5. <u>As to the alleged undue burden</u>, the request concerns only a single, specifically identified letter (precisely defined by date and corresponding parties). The burden of producing such a document is minimal. 6. In this regard, CMEC notes that the Respondent appears to be unusually (or unnecessarily) defensive about this letter – whereas in Requests Nos. 108, 109, and 110, the Respondent agreed to produce specific Alutrint letter / minutes / report that CMEC no longer possesses "<i>as the request is sufficiently focused</i>"; similarly, in Requests Nos. 72, 111 and 112, the Respondent agreed to produce specific correspondence between CMEC and certain State officials.
E. Decision of the Tribunal	The request is granted.

Document Request No	5
A. Documents or category of documents requested	Alutrint's and/or the State's internal memoranda, minutes, reports, presentations, briefs, notes, analyses and other similar documents (including correspondence) assessing or addressing the Hatch report – whether in relation to Hatch's methodology, conclusion or otherwise, and however recorded. <u>CMEC 12/09/2025</u>: By way of further assistance to the State, CMEC expects the responsive documents to likely fall within the following periods: (i) <u>October 2013 to September 2014</u> – between Hatch's submission of its Phase II report (see Request No. 2) and the UNC working team's submission of its review report (see Request No. 38); and (ii) <u>September 2015 to October 2017</u> – between the PNM's return to power (see ¶ 1 below) and the PNM administration's completion of its quantitative assessment of CMEC's claim (see Request No. 40). For the avoidance of doubt, this does not relieve the State of its responsibility to produce responsive documents at other times.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The Hatch report on the valuation of CMEC's engineering claim has been in existence since around October 2013 (during UNC administration), and CMEC promptly reminded the PNM administration of the report after the PNM returned to power in September 2015 [Memorial, ¶ 413; C-0403, C-0404, C-0405]. 2. It is unlikely that Hatch would have valued CMEC's claim at zero. The State has never signalled any disagreement with the Hatch report in its numerous meetings and correspondence with CMEC. Yet, to this day, it has taken no action to compensate CMEC for the engineering performed. 3. It broadly comes down to two possibilities: <i>either</i> the State accepted Hatch's valuation (at least in part) but decided to wait out and not compensate, <i>or</i> that it had reservations about Hatch's valuation but chose to sit on it, thereby denying CMEC any opportunity to respond, as part of a broader systemic strategy of inaction. 4. The requested documents will shed light on, among other matters: a. the State's internal assessment and understanding of the Hatch report, including whether it had accepted Hatch's methodology and/or conclusions, which is a relevant and

	material factor in deciding the weight to be accorded to Hatch's contemporaneous valuation and whether the State has acted credibly in this arbitration; and b. the timeline and any evolution of the State's position on CMEC's engineering claim, which is relevant and material to the issue of delay and potential bad faith in the State's handling of CMEC's claim. 5. These documents are therefore directly relevant and material to both the issues of liability and quantum in this arbitration.
C. Responses and/or objections to document request	Not agreed. In reality, this is a request for the production of Alutrint documents. The Respondent relies on ¶¶ 38-43 of the Preliminary Remarks, above, treating with this issue. As to the substance, the Respondent repeats its response to Request 1. Request 5 is for Alutrint's internal discussions concerning possible settlement, and any communication of those discussions to or with T&T. Any responsive documents would be virtually certain to be privileged and fall to be withheld in accordance with Article 9(2)(b) and 9(4)(b) of the IBA Rules. Further and in any event, the request is insufficiently specific or narrow. It is couched in terms of extreme generality and amounts to a request for general search and disclosure on a particular issue (which issue, as above, is in any case immaterial to the outcome of the present arbitration). It is impossible to see how T&T could comply with the request, other than a search of all documents, wherever held, across a wide date range. As clarified in the accompanying commentary to the IBA Rules, this form of widespread disclosure (or discovery) is not appropriate in international arbitration. The requirements of Article 3.3 of those Rules are specifically to prevent "fishing expeditions" of the kind that this request reflects. Disclosure is therefore resisted on grounds of materiality, privilege, and considerations of procedural economy/ subversion or misuse of the document production process.
D. Replies to objections and request for resolution	1. CMEC maintains this request (with suggested time frames inserted into Section A) and submits it for the Tribunal's resolution. 2. <u>First</u>, as a preliminary point, the State's unilateral alteration of this request to refer only to Alutrint documents is improper and not accepted. This request seeks production of documents assessing or addressing the Hatch report at both

	the State level and Alutrint level (to the extent that any such assessment was commissioned to Alutrint). 3. <u>Second</u>, as to the alleged lack of possession, custody or control of Alutrint documents, CMEC repeats its Overall Replies, ¶¶ 38-40. 4. <u>Third</u>, as to the alleged "<i>virtually certain</i>" attraction of without prejudice privilege, CMEC repeats its Overall Replies, ¶¶ 73-76. 5. <u>Fourth</u>, as to the alleged insufficient specificity, this request is specifically limited to documents <i>substantively assessing or addressing</i> the Hatch report (and consciously avoids general "relating to" type expressions that might encompass documents containing only peripheral or incidental references). Further, in an effort to better assist the State with its search, CMEC has offered indicative time periods within which the responsive documents are likely to fall. 6. Relatedly, CMEC notes that the State's contention that it has to conduct "<i>a search of all documents, wherever held, across a wide date range</i>" appears somewhat contrived and exaggerated. In reality, the substantive assessment documents sought by this request are likely to have been prepared only by the MEEI and/or the Committee and Working Team tasked with the review of CMEC's claim, and any consequential decisions should have been recorded in Cabinet Minutes. The sources of responsive documents should therefore be clear, finite, and readily identifiable. 7. <u>Fifth</u>, as to the alleged lack of materiality, CMEC notes that there is no real rebuttal to the reasoning set out in Section B above. 8. CMEC has explained the relevance and materiality of the Hatch report <i>per se</i> in Request No. 1. For this request, it is worth emphasising that, as explained in Section B above, it bears upon both the issues of liability (¶¶ 3, 4(b)) and quantum (¶ 4(a)). 9. The bearings on quantum are self-evident: any contemporaneous acknowledgement of Hatch's valuation methodology or conclusions is a relevant factor to take into account in the quantification exercise. On the liability front, <i>whether</i> and <i>when</i> the State assessed or addressed the Hatch report, and <i>whether</i> and <i>when</i> it decided to act upon (or not act upon) the report, are themselves relevant and material to evaluating the State's conduct, including whether it has acted
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Claimant's Document Requests
4 July 2025

	in good faith, transparently, and otherwise in compliance with the FET standard.
E. Decision of the Tribunal	The request is granted.

Document Request No	6
A. Documents or category of documents requested	An index of Bundle E (which CMEC understands to be the documentary evidence bundle and which should clearly describe each document with the customary level of detail) in the ICC Proceedings. <u>Note:</u> At this stage, CMEC is requesting only the index, rather than an entire copy of Bundle E, in the interest of procedural economy and efficiency. Some documents contained in Bundle E have been specifically requested through other document requests. However, CMEC reserves the right to request additional documents from Bundle E upon review of the index.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As both the ICC Proceedings and the present arbitration concern the Project (including events from its origins to termination), issues and factual background conceivably overlap. 2. Sural and GORTT, as parties to the ICC proceedings, submitted a substantial volume of documentary evidence – Bundle E spanned at least five volumes and included at least more than 270 factual exhibits [C-0381, fn. 144 (referring to "E5/279")]. 3. An index of Bundle E, clearly describing each document with the customary level of detail, is necessary to identify the full scope, content and relevance of the documentary evidence adduced and relied on in the ICC Proceedings. 4. Without access to the index, CMEC (or the Tribunal) cannot determine whether certain documents are potentially relevant and material to the present arbitration but are missing from the current evidentiary record. If so, CMEC will make targeted follow-up requests, and those documents should be produced as they may bear upon issues now in dispute. 5. CMEC notes that an index of all hearing bundles (including Bundle E) should have been prepared in advance of the hearings in the ICC Proceedings, and thus should be readily available.
C. Responses and/or objections to document request	Not agreed. T&T objects to this request on the following grounds: <u>Confidentiality</u> The ICC Proceedings were in principle confidential. Any documents produced for the ICC Proceedings but <u>not</u> made public remain confidential. Critically, that right to confidentiality

	does not belong to T&T alone – Sural, a wholly independent third-party, was the other party to the ICC Proceedings and is not a party to the present arbitration. It is clearly not within T&T’s gift to unilaterally waive that confidentiality and produce documents produced by the parties in the Sural proceedings. <u>Relevance, Materiality and procedural economy</u> Further and in any event, CMEC’s own description of the basis for this request is a paradigm of a fishing expedition. CMEC does not claim that the index to the bundle is relevant and material to the proceedings (which is the required standard), doubtless because it realises that such an assertion would be absurd. Rather, CMEC explains that it requests the index because it might provide inspiration for further (late) requests for documents, of a kind which CMEC is yet to conceive. That is definitive of a fishing expedition and would be improper even if the document were not a confidential to other proceedings that did not include CMEC (which it is). T&T also notes that CMEC has already made an extraordinarily wide and voluminous request for documents, spanning over 160 pages, many of which are requests for very broad categories of documents. It is therefore (i) difficult to see how CMEC has been in any way hindered or limited in its ability to identify documents for production, such that it requires the requested index, and (ii) impossible to trust that CMEC’s further, belated requests, arising from production thereof, would be appropriately limited and specific. Perhaps to state the obvious, acceding to CMEC’s request will frustrate the smooth operation of the tribunal process. It will feed CMEC’s desire to make yet further unnecessary requests for additional documents that plainly are not needed to resolve the issues in this case.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. Further, to avoid disrupting the procedural calendar, CMEC requests that the Bundle E index be produced within <u>one week</u> of the Tribunal's decision (should the Tribunal grant this request). This will allow any <i>targeted</i> follow-up requests to be discussed or decided, and any further documents to be produced, generally in line with the deadline for the Respondent's production of documents ordered by the Tribunal (i.e. within three weeks, by 31 October 2025).

	<i>Confidentiality (a non-IBA Rules ground)</i> 3. The Respondent's confidentiality objection is misplaced. Confidentiality is not in and of itself a valid ground to resist production of documents. 4. Further, the Respondent's argument is a red herring. A very substantial portion of the documents in Bundle E must have originated from the State itself or its instrumentalities. The State therefore has possession, custody, or control of those documents independently of the ICC Proceedings. That they have been separately produced or submitted by the State in another set of legal proceedings is no reason to shield these documents from production in this case – to the contrary, it confirms the ready availability of these documents and casts doubt on the reasons for the current resistance. 5. In any event, no real adverse consequence could follow from the breach of alleged confidentiality of the ICC Proceedings, if any at all. <i>Relevance and Materiality; Procedural Economy</i> 6. Plainly, the index of Bundle E is relevant and material in that it hosts information that will reveal further relevant and material documents. Bundle E is a central repository of over 270 factual exhibits, which record or reflect events relating to the Project from the early 2000s through 2012 (i.e. from project inception, execution, to termination, and to its aftermath). The factual overlap between the ICC Proceedings and the present arbitration makes it highly probable that Bundle E contains documents material to issues now in dispute. 7. The Respondent's suggestion that CMEC has already made a large number of requests is irrelevant. The fact that CMEC has diligently identified other categories of documents from other sources does not diminish the likelihood that additional relevant and material documents exist in Bundle E. 8. The Respondent's characterisation of this request as a "<i>fishing expedition</i>" is also unfounded. CMEC is not seeking unrestricted access to Bundle E, but only the index, which is a <u>proportionate</u> and <u>efficient</u> step to identify the relevant historical documents and ensure completeness (or at least adequacy) of the evidentiary record. It is low-burden, high-utility; the index will enable CMEC to make targeted, narrowly tailored follow-up requests, if necessary. This approach indeed promotes procedural economy.
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	<i>The Index Should Be Promptly Produced</i> 9. Initially, CMEC expected the State to respond reasonably and agree to produce the index in its voluntary production, which would have allowed any follow-up requests to be resolved in time for the second round of production on 31 October 2025. 10. However, given the State's objection (for unsustainable reasons), CMEC invites the Tribunal to order that the index be produced promptly and, in any event, within one week of its decision. CMEC will then be prepared to promptly communicate any targeted follow-up requests (if any) and to seek to resolve them amicably with the State where possible. 11. This approach is necessary to prevent tactical delay through unmeritorious objections and to ensure that document production is completed in time to preserve CMEC's preparation period for its Reply Memorial, in line with the overriding principles of fairness and equality.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	7
A. Documents or category of documents requested	Remaining written witness evidence submitted in the ICC Proceedings, namely: (1) Declaration of Professor Kenneth Julien (21 January 2014) (2) Rebuttal Declaration of Professor Kenneth Julien (20 February 2014) (3) Declaration of Renda Butler (20 January 2014) (4) Rebuttal Declaration of Renda Butler (21 February 2014) (5) Witness Statement of Alfredo Riviere (21 January 2014) (6) Rebuttal Statement of Alfredo Riviere (21 February 2014) (7) Declaration of Alexander Preziosi (21 January 2014) (8) Rebuttal Declaration of Alexander Preziosi (21 February 2014) (9) Declaration/Witness Statement of Stephen Singh (21 January 2014) (10) Witness Statement of Anand Ramlogan SC (17 January 2014) (11) Rebuttal Witness Statement of Anand Ramlogan SC (14 February 2014) (12) Rebuttal Witness Statement of Leroy Mayers (14 February 2014) (13) Rebuttal Witness Statement of Colleen Murray (13 February 2014) (14) Rebuttal Witness Statement of Adrian Bernard (17 February 2014) CMEC has obtained through public court searches the (first) witness statements of Mr Leroy Mayers, Ms Colleen Murray and Mr Adrian Bernard, and has submitted them respectively as C-0369, C-0368 and C-0367. Items (1)-(14) above comprise the remaining written witness evidence confirmed by the ICC Award to exist [C-0014, ¶¶ 26-27], all of which have been compiled in Bundle C of the ICC Proceedings.

B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Similar to the observations made in Request No. 6 above in relation to documentary evidence, witness evidence submitted in the ICC Proceedings is likely to be directly relevant and material to the present arbitration, given the overlapping subject matter of the dispute (i.e. the Project). 2. Indeed, the witness statements were given by key individuals involved at various stages of the Project: a. Professor Kenneth Julien – Trinidad and Tobago's "<i>father of the downstream energy industry</i>" [C-0501, p. 8]; major initiator and facilitator of the Project b. Mr Leroy Mayers – Energy Ministry's Permanent Secretary and Alutrint's Chairman c. Ms Colleen Murray and Mr Adrian Bernard – Alutrint's management team (respectively covering corporate secretarial and financial matters) d. Mr Anand Ramlogan SC – Trinidad and Tobago's Attorney General (part of the 2010-2015 UNC administration that cancelled the Project) e. Dr Alfredo Riviere, Mr Renda Butler, and Mr Alexander Preziosi – Sural appointed directors to Alutrint's board at different periods of time (prior to Sural's full exit in June 2012) 3. Their statements are expected to contain contemporaneous factual accounts and recollections of events relevant to the dispute (in this regard, if the State now seeks to "disown" any position it took or relied on at the time of the ICC Proceedings, it is certainly a matter to be taken into account in assessing the credibility of the State's current arguments). 4. In fact, the three witness statements already in the public domain and submitted by CMEC as factual exhibits (C-0367 to C-0369) are each demonstrably informative: a. Mr Adrian Bernard's statement confirms the amounts of shareholders' capital contributions to Alutrint and Alutrint's payments to CMEC [C-0367, ¶¶ 7-9]; b. Mr Colleen Murray's statement provides a detailed chronological account of Alutrint's board composition and meetings [C-0368, ¶¶ 11-90]; and c. Mr Leroy Mayers' statement covers several general matters relating to the Project, focusing on events
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	concerning or consequent upon Sural's failure of capital contribution [C-0369, ¶¶ 64-125]. 5. Notably, Mr Leroy Mayers, who is again put forward by the State as a witness in the present arbitration, "<i>confirm[ed] and adopt[ed]</i>" his 20 January 2014 witness statement in C-0369 [LM WS, ¶ 2] (although he, for reasons unexplained, omitted any reference to his second witness statement dated 14 February 2014). 6. By way of example and without limiting the full relevance of these witness statements, CMEC highlights below some major issues now in dispute that are likely to have been addressed in the requested witness statements. a. <u>Reasons for the State's termination of the Project</u> i. Throughout the Counter-Memorial, the Respondent placed heavy reliance on a single paragraph from Mr Anand Ramlogan SC's witness statement, reproduced in the ICC Award [C-0014, ¶ 137], as alleged reasons for the Cabinet's decision to discontinue the Project (said to be the lack of CEC approval, HF exceedances, and economic viability): Counter-Memorial, ¶¶ 169, 173, 572, 644, 1023. ii. That paragraph must be read in the context of Mr Ramlogan SC's full statement, which may provide further detail – or reveal a lack of substantiation – for his conclusions. iii. In fact, the credibility of Mr. Ramlogan SC's testimony is questionable. For instance, contrary to his assertion that "<i>the prospects of the Court of Appeal reinstating the CEC were not promising and indeed in November 2010 the EMA withdrew its appeal</i>" [C-0014, ¶ 137], the factual evidence shows that the EMA's appeal was only withdrawn in July 2011 after the State's public renunciation of the Project [C-0288; C-0289]. iv. Furthermore, Professor Kenneth Julien testified that he viewed the EMA's decision to withdraw the appeal as influenced by "<i>the advice of the Government</i>" [C-0387, ¶ 8.1 (citing Julien's witness statement)]. b. <u>HF emissions and compliance with EMA standards</u> i. A central pillar of the Respondent's defence, as extensively pleaded in the Counter-Memorial (e.g. ¶¶ 40-52, 58, 164-166, 172-175, 178, 572-573), is that
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	the Project was unsound on environmental and health grounds – described by the Respondent as facing "<i>insurmountable environmental obstacles</i>" (¶ 172). ii. It is premised on the validity of this factual contention that the Respondent sought to invoke the "<i>health, safety and environmental</i>" "<i>reservation</i>" to the BIT (§ D.2.3), and further argued that its termination of the Project fell within the "<i>police powers exception</i>" (§ I.7) or was "<i>for the public purpose</i>" (§ I.9.1). iii. However, despite these sweeping assertions, the only <i>prima facie</i> environmental concern identified in the Counter-Memorial is whether an expanded 250,000 mtpy smelter in Phase II of the Project would have met the EMA's 1 µg/m³ HF emission limit. The Respondent appears to be basing this concern entirely on one sentence from Mr Ramlogan SC's witness statement [Counter-Memorial, ¶ 173; C-0014, ¶ 137] and another sentence from a Cabinet Note dated 16 July 2010 [Counter-Memorial, ¶ 178; C-0248, ¶ 21] (see Request No. 14 below for observations and requested production around this Cabinet Note). iv. As already noted in Memorial, Annex 4, fn. 46, there is ample contemporaneous, mutually corroborating, evidence suggesting that HF exceedances in Phase II were unlikely, including the testimony of Mr Renda Butler, former Managing Director of Alutrint (point (e)). v. As Mr Butler was cross-examined at length on this issue in the ICC Proceedings (with him maintaining the environmental viability of the Project) [C-0383, 169:8-20, 171:15-18, 205:19-23], it is expected that his written witness statement(s) would have addressed the issue of HF emissions in considerable detail. c. <u>Origins of the Project and the UNC's stance on the aluminium industry</u> i. In the Memorial, CMEC presented evidence of longstanding bipartisan support for an aluminium industry and economic diversification in Trinidad and Tobago: Memorial, § E.1 (¶¶ 46-54), referring to C-0060; C-0097, pp. 26-29; C-0112, p. 5; C-0198. Based on this historical context, CMEC had legitimately expected a more stable government approach to the Project, irrespective of the political party in power: Memorial, ¶ 638(a).
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	ii. The Respondent disputes this, relying solely on the UNC members' negative remarks about aluminium smelting in a House Debate on 25 August 2006 [C-0097] but contradictorily (and baselessly) contending that "<i>for several years prior to the execution of the 2005 Contract, the UNC's stance on the establishment of an aluminium smelting industry in T&T, in light of the attendant health and environmental concerns, was well-known</i>": Counter-Memorial, § D.2.2 (quotation from ¶ 62, emphasis added). iii. It has been noted in the ICC Award that the initiation of the Project traces back to the 1995-2001 UNC administration. Professor Kenneth Julien was part of the discussions between Dr Alfredo Riviere of Sural and Trinidad and Tobago's then Prime Minister Basdeo Panday [C-0014, ¶ 54]. Despite the change of government in late 2001, Professor Julien continued to consult and oversee the Project under the Patrick Manning-led PNM administration [C-0014, ¶ 58]. iv. Therefore, Professor Kenneth Julien and Dr Alfredo Riviere are likely to have provided relevant evidence on the Project's origins and the representations made by both UNC and PNM Governments in their ICC witness statements. v. Further, Mr Renda Butler also appears to have addressed this issue. An excerpt of his Declaration was cited in the ICC Award, in which he stated that "<i>Trinidad & Tobago had been exploring the aluminum business for a long time. GORTT met with and discussed developing an aluminum industry in the country for years with many leading aluminum companies.</i>" [C-0014, ¶ 53] 7. In sum, the full witness statements from the ICC Proceedings will assist the Tribunal in forming a complete and accurate understanding of the factual matrix underlying the dispute. This is particularly considering that the Respondent has selectively relied on some excerpts from these very statements (without disclosing the context or any responsive statement from other witnesses).
C. Responses and/or objections to document request	The objections to Request 6, in respect of confidentiality, relevance and materiality, refer. The requested documents are not publicly available because they are part of a confidential arbitration. T&T has no unilateral right to waive that confidentiality. Neither has CMEC made out its case on relevance and materiality. It is wrong in principle to suggest that the reuse of second-hand evidence from prior arbitral

	proceedings on different issues, and which can no longer be tested, can be at all relevant to the outcome of these proceedings. CMEC has not, in any event, demonstrated that the documents it seeks will or could materially affect the outcome in these proceedings. It is obvious that the Project was terminated for several reasons, including lack of effective CEC approval (as a result of a reasoned decision – [C-0018] - which indisputably shows that there were environmental concerns), HF exceedances, and economic viability. CMEC seems intent on challenging these reasons. Of HF emissions for example, CMEC claims that there exists “ample contemporaneous, mutually corroborating, evidence suggesting that HF exceedances in Phase II were unlikely.” But the “correctness” of the decision to terminate the Project is not on trial in these proceedings: see Respondent’s Counter-Memorial: ¶¶910 to 921. Neither will it be material to the outcome of these proceedings to consider detailed evidence from prior proceedings which may (or may not) shed light on the extent to which the UNC did or did not generally support smelting projects, not least as these matters cannot be relevant to CMEC’s legitimate expectations if they had no knowledge of them: see response to Request 9 below. Nor will the production of the entire bundle of evidence and transcripts in prior legal proceedings assist CMEC in its apparent quest to challenge “the credibility of Mr. Ramlogan SC's testimony” in those prior proceedings. This is a good example of the point of principle; i.e. why it is that a tribunal does not tend to order the production of evidence and material already put before and considered by a prior tribunal: it is not now appropriate or even logically feasible for the later tribunal to (re)test that evidence, even to come to different conclusions on it. Such evidence, if relevant at all, can only be by way of general background. None of this material, in any event, is going to get the Claimant anywhere near its stated goal of establishing that the Project was terminated for “political reasons” (whatever in fact this means). Its admission into evidence will, however, greatly protract the disclosure and trial process, leading very likely to delays and greater costs. It is an unwarranted diversion from the task at hand.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. As a preliminary point, and to put Requests Nos. 6 to 8 in context, the Respondent asserts in its Counter-Memorial (¶ 1235) that it has been caused "<i>significant difficulty</i>" in "<i>obtaining the relevant documents and locating relevant</i>

	<i>witnesses, particularly witnesses". Yet, the Respondent has deliberately disregarded this body of highly relevant contemporaneous documentary and testimonial evidence from the ICC Proceedings – and, in fact, strongly resisted its production.</i> 3. Particularly with regard to witness evidence, as highlighted in Section B ¶ 2 above, key individuals involved in various aspects of the Project (policy, technical, managerial, financial, corporate secretarial, legal) and at various stages of the Project – from its initiation through to its cancellation – have provided detailed witness statements and been cross-examined as early as 2014. 4. The relevance and materiality of this body of evidence cannot be overstated. They capture contemporaneous testimony from key decision-makers and project participants on various issues that overlap substantially with those now before the Tribunal. Access to these testimonies will enable the Tribunal to assess the credibility and consistency of the Respondent's current positions against its prior statements and conduct. Denying production would deprive the Tribunal of a critical evidentiary source and risk an incomplete or distorted factual record.
E. Decision of the Tribunal	The request is granted.

Document Request No	8
A. Documents or category of documents requested	Transcripts of the oral hearing on the merits in the ICC Proceedings (8-10 September 2014, Miami) – a transcription of the evidence was taken and is contained in 6 volumes [C-0014, ¶ 33]. CMEC has obtained the full Volume 2 (with the oral witness evidence of Mr Renda Butler and Dr Alfredo Riviere) through public court searches, which has been submitted as C-0383. This request therefore only covers <u>Volumes 1 and 3-6 of the hearing transcripts</u>.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	<i>Oral witness evidence</i> 1. Based on the ICC Award [C-0014, ¶ 35], the following remaining oral witness evidence was recorded in the requested volumes of hearing transcripts. a. Transcript of the oral evidence of Professor Kenneth Julien, contained in Volume 1, pages 88-149 b. Transcript of the oral evidence of Leroy Mayers, contained in Volume 3, pages 263-363 c. Transcript of the oral evidence of Colleen Murray, contained in Volume 3, page 364 to Volume 4, page 419 d. Transcript of the oral evidence of Adrian Bernard, contained in Volume 4, pages 420-434 2. CMEC repeats the reasons stated in Request No. 7, ¶¶ 1-7, with respect to the relevance and materiality of the witness evidence from the ICC Proceedings. 3. CMEC adds the following specific to oral witness evidence – it is helpful because it may: a. clarify, expand upon, or qualify the written witness evidence submitted in the ICC Proceedings; b. reveal additional factual details, nuances, or inconsistencies that were not captured in the written statements; c. provide insight into the credibility and demeanour of the witnesses, which may be relevant to assessing the reliability of their evidence; and

	d. reflect contemporaneous questioning and responses that may bear directly on issues now in dispute in this arbitration. 4. The production of oral witness transcripts alongside the written witness statements therefore ensures a complete and balanced evidentiary record. It allows the Tribunal to consider the full context in which the witness evidence was presented and tested. <i>Other parts of the hearing – oral opening submissions (partial Volume 1) and oral expert evidence (Volumes 5-6)</i> 5. In addition to the oral witness evidence (which comprises the majority of the hearing transcripts), the remaining transcripts appear to contain the parties' respective oral opening submissions (Volume 1, pages 1-87) and oral expert evidence (Volumes 5-6). 6. These parts of the hearing are also relevant and material in that: a. the oral opening submissions would reflect Sural's and GORTT's contemporaneous factual and legal positions – and given the nature of oral openings, they are expected to present each party's most focused and strategic framing of the issues; and b. the oral expert evidence – particularly in circumstances where CMEC does not request the production of the written expert reports – would enable a general understanding of the expert issues in debate, which concerned the valuation of Alutrint and Sural's interest in it. The production of these transcripts imposes no additional burden on the Respondent, but will provide the Tribunal with the full record of the ICC hearing (if the Tribunal determines that any part of the expert evidence may bear on issues in this arbitration).
C. Responses and/or objections to document request	The objections to Requests 6 and 7 refer. The Respondent repeats its objections here. CMEC appears intent on re-running the Sural arbitration within these proceedings, but without the witnesses. This is inappropriate, unnecessary and a significant distraction from the main event. It will harm procedural economy by consuming the parties and the tribunal in an unhelpful re-appraisal of evidence given to a separate tribunal at a separate time on a series of separate issues. Again, CMEC has not explained why any of these documents will have an impact on the outcome of these proceedings. This Tribunal will not be assisted by a “complete and balanced evidentiary record” from prior arbitral proceedings. This is particularly so as the witnesses

	who gave evidence in the prior proceedings cannot be recalled to give evidence in these proceedings, given CMEC's delay in commencing the present proceedings. A close analysis of their oral evidence in prior proceedings is hardly going to assist in dealing with the (relatively narrow) factual disputes in this case.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats the replies stated in Requests Nos. 6 and 7. 3. CMEC adds the following observations in light of the additional points raised by the Respondent in Section C above. 4. CMEC is not seeking to "<i>re-run</i>" the ICC arbitration, which has long been concluded and eventually formed part of a comprehensive settlement agreement between GORTT and Sural [C-0441, p. 4.]. Nor is the purpose to engage in a wholesale "<i>re-appraisal of evidence</i>". Rather, the objective is <u>efficiency</u>, <u>fairness</u> and <u>equality</u> – namely, to: a. leverage existing, contemporaneous evidence that is directly focused on the same Project that is the subject of dispute in the present arbitration; and b. remove the imbalance in access to historical evidence. The State has full access to the ICC record and has undoubtedly reviewed and assessed that record in preparing its case. It has chosen to selectively rely on certain excerpts while dismissing other statements adverse to its current position under the guise of irrelevance. Allowing the State to maintain such selective disclosure would create a serious asymmetry in access to evidence and confer an unfair tactical advantage. The Tribunal should not permit one Party to control the narrative by cherry-picking from a body of contemporaneous evidence while denying the other Party the opportunity to review the same record in full. 5. The Respondent argues that (some of) the witnesses cannot be recalled. That is precisely why their prior testimony – given under oath and tested by cross-examination – is important. It represents the best available evidence from individuals who played key roles in the Project. To disregard this body of tested evidence would deprive the Tribunal of a critical source of contemporaneous insight. 6. On the other hand, it is apparent that some witnesses remain available to the State, including Mr Leroy Mayers, who is again being put forward as a witness in this arbitration.

	Notably, in his current witness statement (at ¶ 2), Mr Mayers expressly " <i>confirm[ed] and adopt[ed]</i> " his witness statement [C-0369] in the ICC Proceedings. This demonstrates that even witnesses who are recalled continue to rely on their ICC statements as their primary narrative.
E. Decision of the Tribunal	The request is granted limited to the transcripts of the testimony of those witnesses who have provided or who will provide statements in the present proceedings.

Document Request No	9
A. Documents or category of documents requested	Documents recording or reflecting the UNC Government's assessments in connection with the 1998 Norsk Hydro aluminium smelter project (which was a 474,000 mtpy smelter, in two phases of 237,000 mtpy each).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. See Request No. 7, ¶ 6(c)(i)-(ii) above for a general description of the Parties' differences regarding the UNC's historical stance on the aluminium industry and whether CMEC could have formed a legitimate expectation of Trinidad and Tobago's continuity of aluminium policy irrespective of the party in power. 2. As CMEC has pleaded in Memorial, ¶¶ 51-52 (to which the Counter-Memorial made no response), a key circumstance underpinning CMEC's expectation of policy continuity is that the UNC, too, had actively pursued and publicly endorsed the construction of an aluminium smelter in Trinidad and Tobago. 3. The 1998 Norsk Hydro aluminium smelter project represented a high-profile embodiment of the UNC's aluminium initiative. It was, to CMEC's knowledge, the most advanced aluminium smelter project prior to Alutrint. 4. The UNC's strong support for aluminium smelting is clearly evidenced by Prime Minister Basdeo Panday's public address at the 12 November 1998 signing ceremony for the Norsk Hydro project agreement [C-0635]. Relevant parts of his address include (without limitation): a. In relation to the historical background [C-0635, pp. 3-4]: <i>"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. [...] The earliest initiatives can be traced back to the late 1960s. [...] <u>Trinidad and Tobago's thirty-year quest to establish a local smelter</u> 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</i>

	<i>economic development in this country."</i> (emphasis added) b. In relation to the environmental dimension [C-0635, p. 5]: <i>"The project agreement requires that Hydro will comply with the Environmental standards as determined by the Environmental Management Agency and where none exists to adopt the applicable World Bank Standard. This will ensure that this industrial facility will be constructed and operated within acceptable Environmental standards."</i> c. In relation to the assurance on the investment climate [C-0635, p. 6]: <i>"I would like to assure the principals of Hydro who have taken the initiative to invest in this country, of the Government's continuing commitment to providing the best investment climate possible. An investment of this magnitude, US\$2.6 billion, is no doubt based on the fact that the country possesses good characteristics for success [...]"</i> 5. Given that the Norsk Hydro smelter project had progressed to the formal signing of a project agreement, and considering its significant size, it is reasonable to assume that the Government had conducted sufficient assessments to establish (at least on a preliminary basis) the project's feasibility, benefits, and environmental implications – hence this request. 6. Notably, Prime Minister Panday's remarks did not suggest any unmanageable environmental risks associated with the construction or operation of an aluminium smelter. This is particularly relevant given that the Norsk Hydro project was both <u>larger in scale</u> and <u>earlier in time</u> than Alutrint – technological advancements since then would only have further mitigated the environmental concerns. 7. In addition to revealing the 1995-2001 UNC Government's true stance on the aluminium industry at the time (which is critical to testing the Respondent's current assertion that the UNC had long opposed aluminium smelting on environmental and health grounds), the responsive documents will shed light on whether the 2010-2015 UNC Government's cancellation of the Alutrint smelter was a
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	politically motivated and/or discriminatory decision marked by inconsistency and arbitrariness. 8. As to potential discrimination, it is pertinent to recall that Norsk Hydro is a Norwegian company and Former Energy Minister Carolyn Seepersad-Bachan has made comment that <i>"I have deep concerns that Norwegian experts [were] brought to Trinidad and Tobago to so-call clear the air on this Alutrint project [...] 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."</i> [C-0226]
C. Responses and/or objections to document request	Not agreed. These documents have no relevance or materiality. First, they are too historic to be of relevance to any environmental concerns; understanding of, and views on, the environment evolved rapidly over the relevant period. Secondly, as to discrimination, the UNC party in 1998 was clearly not identical to the UNC party of 2010-2015. The views of the party, and the individuals who drove it, obviously changed over time. T&T has stated that the UNC changed its position on smelting after 2001: Respondent's Counter-Memorial ¶59 ; the requested documents therefore have no probative value as to consistency or discrimination. In any event, comparing only two distinct projects, many years apart, is clearly an insufficient basis to assess allegedly discriminatory or arbitrary decision making; it is too small a sample size from which to draw any pattern of conduct with which a future decision might or might not be consistent. As to CMEC's alleged expectation of policy continuity, this request is self-defeating. It is impossible for CMEC to have developed a reasonable expectation (of anything) on the basis of documents it has never seen and of which it does not have possession. By its nature, a document which CMEC sees for the first time in this arbitration cannot be evidence of its reasonable expectations. Indeed, the fact that CMEC is fishing for evidence to support that assertion is itself demonstrative of the fact that it had no basis on which to found its alleged expectation. CMEC's reliance on ¶¶51-52 of its Memorial is not understood. Those paragraphs simply record that T&T in 1998 sought to build a smelter and that the UNC PM at the time recorded the momentous occasion. There is nothing in those paragraphs to respond to (or to deny). Neither do they make out some vague claim to an "expectation" that considered opinion on all aspects of aluminium smelting would remain static for all time henceforth.

	In any event, CMEC plainly has sufficient material to make the submissions it intends to make. CMEC's submissions on this point are already set out in its justificatory remarks (in which it effectively reargues its case). There is no need for any further document digging.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. <i>Clarification on Strawman Argument</i> 2. As a preliminary point, documents sought by this request are the State's (internal) assessments of the Norsk Hydro aluminium smelter project. As such, CMEC does not contend – and has never contended – that these documents are essential to establishing CMEC's legitimate expectation of policy continuity (the public statements, endorsements, and policy initiatives are, which CMEC has adduced and will adduce further evidence to substantiate). The Respondent's argument that CMEC could not have relied on documents it had never seen is therefore a strawman. 3. Section B, ¶¶ 1-4 – in which CMEC recapped the traditional bipartisan support for aluminium smelting in Trinidad and Tobago which, during the 1995-2001 UNM administration, culminated in the 1998 Norsk Hydro project agreement – were to lay out the general context for request for disclosure around the Norks Hydro project. 4. Built on that context, as set out in ¶¶ 7-8 above, the requested documents are relevant and material to the issues of consistency, arbitrariness, and discrimination in the State's conduct toward the Alutrint Project and CMEC as the EPC contractor. <i>Relevance and Materiality</i> 5. The Respondent's objection is solely based on the alleged lack of relevance or materiality. 6. The UNC Government's assessments of the Norsk Hydro project – the most advanced aluminium smelter initiative prior to Alutrint – are highly relevant for at least three reasons. 7. <u>First</u>, they reveal the UNC Government's contemporaneous evaluation of the feasibility, benefits, and environmental implications of a large-scale smelter project, and its approach to the management environmental impact.

	8. They provide a benchmark against which to assess whether the 2010–2015 UNC Government's cancellation of Alutrint was consistent with prior policy or marked by arbitrariness and/or political motive. The Respondent's comment that "<i>views evolved</i>" does not negate the probative value of evidence showing a dramatic reversal in position. 9. They bear on the issue of discriminatory treatment. The Norsk Hydro project involved a Norwegian investor and received strong governmental support, whereas the Alutrint project – backed by a Chinese investor – was cancelled abruptly. Assessments from 1998 will help the Tribunal determine whether the stated environmental rationale for cancellation was genuine or pretextual. 10. The Respondent's argument that comparing two projects "<i>many years apart</i>" is insufficient to show a pattern misses the point (noting that the two projects were in fact close in time – Norsk Hydro was signed in 1998, and discussions on Alutrint started in 2001). These documents alone may not establish discrimination or arbitrariness; however, they are one piece of a broader evidentiary mosaic. The IBA Rules require relevance and materiality – not that a single document conclusively proves a claim. 11. The Respondent asserts that environmental views evolved over time, but this only heightens the relevance of the requested documents. If the UNC Government in 1998 considered a smelter project <u>nearly twice the size of Alutrint</u> to be environmentally acceptable, that fact is highly material to assessing whether the later cancellation of Alutrint was genuinely driven by environmental concerns or by other factors. 12. Evidence of what the State thought and did at earlier inflection points is probative of whether later conduct was consistent, reasoned, and non-pretextual – which are core FET inquiries.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	10
A. Documents or category of documents requested	Documents recording or reflecting (1) the discussions between Sural and the UNC Government (including NGETF and NGC) in 2001 regarding the proposal for an aluminium smelter project; and (2) any assessment by the UNC Government in respect of Sural's proposal.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The reasons stated in Request No. 9 above apply <i>mutatis mutandis</i>. 2. Further, CMEC repeats Request No. 7, ¶ 6(c)(iii), i.e. the Project (albeit not yet named "Alutrint" at that time) originated during the 1995-2001 UNC administration. This is another importance circumstance underpinning CMEC's expectation of consistent treatment across successive governments. 3. To assist the State in locating relevant documents, CMEC draws the State's attention to the following additional details revealed by the then Minister of Finance, Gerald Yetming, in his budget presentation on 14 September 2011 [C-0636, pp. 24-25]: <i>"In addition, there are other projects under consideration that are a departure from the traditional investments that exist in the gas-based sector. These projects have the added advantage of deepening the diversification process and contributing more significantly to permanent employment opportunities.</i> [...] <i>With respect to the establishment of an aluminum smelter plant, several prospective investors, including Noranda, Pechiney and Sural have been holding discussions with the National Gas Company."</i>
C. Responses and/or objections to document request	The objections to Request 9 refer. The Respondent repeats its objections here.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 9 apply <i>mutatis mutandis</i>.

E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.
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Document Request No	11
A. Documents or category of documents requested	To the extent not covered by Requests Nos. 9 and 10 above, any other assessments, analyses, studies and similar documents developed or commissioned by the 1995-2001 UNC Government in connection with the establishment of an aluminium industry in Trinidad and Tobago (including the environmental and health dimension). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: To the extent not covered by Requests Nos. 9 and 10 above, any other <u>environmental and health</u> assessments, analyses, studies and similar documents developed or commissioned by the 1995-2001 UNC Government in connection with the establishment of an aluminium industry in Trinidad and Tobago ~~(including the environmental and health dimension)~~.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The reasons stated in Request No. 9 above apply <i>mutatis mutandis</i>. 2. This request is intended to capture the 1995-2001 UNC Government's other preparatory work toward establishing an aluminium industry in Trinidad and Tobago (in addition to the specific initiatives involving Norsk Hydro and Sural). Responsive documents will further evidence the UNC's active and informed support for aluminium smelting – which in turn bears upon the lawfulness of the successor UNC Government's decision to terminate the Project.
C. Responses and/or objections to document request	The objections to Request 9 refer. Additionally, this request is clearly not a narrow or specific category of documents, nor does CMEC even attempt to justify why this “catch-all” request would produce relevant and material documents. CMEC has identified already very broad categories of documents in Requests 9 and 10. This request effectively overrides the (limited) effort CMEC has made to focus its request and seeks a full disclosure exercise on the part of T&T. T&T’s Preliminary Remarks at ¶¶ 4-37 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 9 apply <i>mutatis mutandis</i>.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	12
A. Documents or category of documents requested	The full report of the "<i>technical assessment</i>" carried out by a review team in or around May 2008 which concluded that the Alutrint smelter was "<i>expected to meet the required production and environmental emissions criteria</i>" [C-0149, p. 1]. If the full report is unavailable, then at a minimum, the "<i>detailed observations</i>" from the technical assessment (being the appendix to C-0149) should be produced.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. See Request No. 7, ¶ 6(b) above for a general description of the Parties' differences regarding whether the Project was in compliance with the prescribed environmental standards. 2. As the Respondent has placed environmental compliance squarely in issue – and built a substantive part of its defence on this ground – any contemporaneous documents (especially technical documents) addressing environmental performance are clearly relevant and material. Such documents would provide objective, expert-based evaluations of the Project's environmental viability, and may directly contradict the Respondent's current assertions. 3. It bears (re-)emphasis that an expansion into a 250,000 mtpy smelter in Phase II of the Project had been confirmed since no later than October 2006: Memorial, ¶¶ 114.2(b), 287; C-0103, p. 5. Accordingly, any technical or expert assessments conducted from that point onward would reasonably have taken the Phase II expansion into account.
C. Responses and/or objections to document request	Not agreed. This document is not material. T&T has not asserted that this report was the basis of its decision to terminate the project. It is a historic document which will do little more than add to the general factual background of the dispute. It is therefore unduly burdensome for T&T to produce it and it is not material to the outcome of the case. T&T repeats that the correctness of the reasons for terminating the Project is not on trial: see the response to Request 7 above.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. It is a material document to advance CMEC's case: that the Project was environmental feasible and the termination was premature and not based on <i>any</i> fact of insurmountable environmental obstacles.

E. Decision of the Tribunal	The request is granted.
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Document Request No	13
A. Documents or category of documents requested	The fluoride report submitted in or around November 2008 " <i>from an international specialist</i> ", which indicated that " <i>fluorides continue to pose no risk to human health in the surrounding population</i> " "[w]ith respect to the Phase II expansion" [C-0162, p. 1].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 12, ¶¶ 1-2. 2. Specifically with respect to this fluoride report, CMEC adds the following: a. This report was commissioned specifically with respect to the Phase II expansion, and will therefore directly assist the Tribunal in understanding whether the Project, in its full envisaged scope, was expected to meet the applicable environmental standards without causing any (or at least any unacceptable) human health impact. b. Furthermore, as noted in Alutrint's letter dated 20 November 2008, after considering the specialist fluoride report, Alutrint – as "<i>a prudent risk-mitigation action</i>" – decided to further adjust the Phase I rectifier voltage and plant layout to ensure that there would be no likely fluoride impact from the Phase II expansion: Memorial, ¶¶ 260, 288; C-0162, p. 1. c. This report, together with the subsequent further mitigation measures, directly contradicts the Respondent's assertion that the Project would not have met the 1 µg/m³ HF emission limit in Phase II expansion [Counter-Memorial, ¶ 178; C-0248, ¶ 21].
C. Responses and/or objections to document request	The objection to Request 12 applies <i>mutatis mutandis</i> to this request. It is no part of this Tribunal's function to merits test the reasons for terminating the Project. The only requirement is that the concerns were properly considered in a rational way.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. It is a material document to advance CMEC's case: that the Project was environmental feasible and the termination was premature and not based on <i>any</i> fact of insurmountable environmental obstacles.
E. Decision of the Tribunal	The request is granted.

Document Request No	14
A. Documents or category of documents requested	Any documents, if any exist, forming the basis upon which the authors (said to be Mr Leroy Mayers and Mr Frank Look Kin [LM WS, ¶ 118]) of the 16 July 2010 Cabinet Note stated that <i>"with two potlines the company will be unable [to] meet the HF standard of one (1) microgram"</i> [C-248, ¶ 21].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As noted in Request No. 7, ¶ 6(b) above, the Parties dispute the Project's compliance with environmental standards. The 16 July 2010 Cabinet Note is a central piece of evidence relied upon by the Respondent to support its assertion that the Project would not be environmentally viable in Phase II [Counter-Memorial, ¶ 178; C-0248, ¶ 21]. 2. Mr Leroy Mayers has claimed co-authorship of this 16 July 2010 Cabinet Note [LM WS, ¶ 118]. 3. However, when addressing the statement in the Cabinet Note regarding HF emissions, Mr Mayers appears unable or unwilling to provide any evidentiary basis. Instead, he merely reiterates his personal belief – without citing any supporting data or analysis – that "[m]y understanding was that it was not possible to meet the HF (hydrogen fluoride) standard of 1 microgram with two potlines" [LM WS, ¶ 120]. 4. This lack of substantiation is further compounded by Mr Mayers' simultaneous acknowledgment that: a. <i>"my understanding was that the health risks had been mitigated to the highest degree possible with the Project"</i> [LM WS, ¶ 55] b. <i>"[t]he Note for Cabinet did not consider the next phase[] of the Project in detail, because specific information about the impact of a 250,000 mtpy smelter was not available at the time."</i> [LM WS, ¶ 120] 5. It is, to say the least, logically inconsistent for Mr Mayers to claim both a lack of information regarding Phase II and a definitive conclusion that Phase II could not meet the HF emission standard. 6. This contradiction casts serious doubt on whether the Cabinet Note's negative conclusion regarding HF emissions was based on any objective evidentiary foundation (such as technical data or expert analysis). Production of documents responsive to this request (if any) is necessary to determine whether such a foundation existed.

	7. If the Cabinet Note's conclusion on HF emissions was unsupported, speculative, or influenced by non-technical considerations (including political pressure), then the decision to terminate the Project would have been based on materially flawed and misleading information. It would lack the legitimacy and integrity required under international law, and directly contradict the Respondent's contention that the decision was "<i>made in the light of a thorough and sober consideration of all relevant matters</i>" [Counter-Memorial, ¶ 574].
C. Responses and/or objections to document request	Not agreed. This request is improper and unrealistic. <u>Improper Request</u> First, as detailed above, CMEC is required to request <u>narrow and specific</u> categories of documents which it <u>believes to exist</u> (and to be in T&T's possession), and which are relevant and <u>material</u> to the outcome of the arbitration. The fact that CMEC includes the phrase "if any" in its request reveals that it has no documents in mind, and the detail of its request suggests that it believes – indeed hopes – that none exist. Evidently, that is an improper request. The "reasons" for the request are a brazen and ill-disguised supplementation of CMEC's pleadings. These are submissions: the proper course would be for CMEC to raise its complaints about the 16 July 2010 cabinet note in its written submissions. <u>Unrealistic</u> T&T does not accept that the cabinet note was based on no underlying information (and notes the absence of any real evidence from CMEC on which it bases the extraordinary belief that this was Mr Mayers' practice). However, the note is over 15 years old. As is clear from CMEC's own request, it does not cite specific underlying documents (as is normal practice for a cabinet note). It is unrealistic to think that Mr Mayers, or anyone else connected with T&T, would remember precisely what information was reviewed in its preparation – particularly given that the authors of the note would have come across some of that information in the general performance of their duties, rather than specifically for the purpose of the note. CMEC must realise that T&T has no reliable way to identify documents responsive to this request, which renders it otiose. Again, this request assumes that the Tribunal will engage in a merits assessment of the reasons for termination. It is amply clear on the available documents that there were genuine and proper

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	concerns about various aspects of the Project including HF emissions. Nothing is to be gained by attempts to fish for tangential information and documents to second guess the correctness of those concerns, with the benefit of hindsight or otherwise.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	15
A. Documents or category of documents requested	To the extent not covered by Requests Nos. 12, 13 and 14 above, any other contemporaneous technical, scientific, expert or specialist studies, assessments, reports and similar documents in relation to the environmental and health impact of the Project, including whether an expanded 250,000 mtpy smelter in Phase II would have been able to meet the 1 µg/m³ HF emission limit. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: To the extent not covered by Requests Nos. 12, 13 and 14 above, any other contemporaneous technical, scientific, expert or specialist studies, assessments, reports and similar documents in relation to ~~the environmental and health impact of the Project, including~~ whether an expanded 250,000 mtpy smelter in Phase II would have been able to meet the 1 µg/m³ HF emission limit. <u>Time range: 2008-2010</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 12, ¶¶ 1-3. 2. The Project had been subject to intense environmental scrutiny during its construction (which was partly the reason for extensive engineering works), and thus a fair volume of contemporaneous professional studies must exist. 3. This request is both necessary and proportionate in light of the Respondent's reliance on environmental and health reasons as an overriding justification for the Project's termination – Counter-Memorial, ¶ 644: "<i>the Project was terminated in substantial part because of the environmental and health concerns</i>". 4. It is also necessary to guard against selective disclosure under Request No. 14 (e.g. the production of outdated or superseded materials), and to ensure a thorough and accurate evidentiary record on a matter that the Respondent itself has placed at the heart of its defence.
C. Responses and/or objections to document request	Not agreed. This request is plainly too wide and would be oppressive to T&T if ordered. T&T repeats the observations made in the objection to Request 11. There is no narrow or specific category of documents identified here – rather, CMEC once again makes this request in juxtaposition to such categories of documents (albeit

	themselves not tightly defined) as it is capable of specifying. CMEC cannot possibly believe such a nebulous class documents to be in the possession of T&T when it is unable to describe those documents or cite any basis for their ever having existed. Responding to this request would require T&T to search far and wide for documents of no defined origin, purpose, format, or location, across a broad date period, on the <u>possibility</u> that <u>some</u> other document might exist. That is unduly burdensome for T&T and illustrates the reasons for the existence of the IBA Rules. Finally, as noted, CMEC wrongly proceeds on the basis that this Tribunal will embark upon a full merits based reappraisal of the question of environmental impact and HF emissions. This is not its function. CMEC has based its claim on the extraordinary and self-evidently high benchmark that the Project was terminated for purely “political reasons” (though never really properly explained, presumably CMEC means transitory or self-serving reasons not reflecting genuine concerns by the people of Trinidad and Tobago and the government at the time). None of this material is going to get the Claimant anywhere near meeting this case and it is not therefore going to assist the Tribunal (or affect the outcome of the case).
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	16
A. Documents or category of documents requested	(1) EMA's internal minutes, resolutions, or other decision-making documents that approved, authorised or recommended the lodging of the appeal against the 2009 High Court Decision. (2) EMA's notice of appeal on 6 July 2009. (3) To the extent that the EMA's grounds of appeal were set out or reflected in other document(s), CMEC also requests the production of such other document(s). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: (1) EMA's internal board minutes, ~~resolutions~~, or other equivalent decision-making document(s) that approved, authorised or recommended the lodging of the appeal against the 2009 High Court Decision. Note: Only Sub-category (1) is contested. The Respondent has agreed to produce documents under Sub-categories (2) and (3).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The Respondent has cited the 2009 High Court Decision in Counter-Memorial, ¶¶ 163-166 and then referred to it multiple times throughout its submissions as being "<i>detailed</i>" and "<i>fully reasoned</i>" (¶ 1024). 2. In contrast, the Respondent only briefly acknowledges that the EMA lodged an appeal against the judgment in July 2009, without providing any detail on the grounds or substance of that appeal: Counter-Memorial, ¶ 168. 3. In fact, the EMA filed a notice of appeal on 6 July 2009 and issued a public release about the appeal the following day [C-0637]: <i>"The Environmental Management Authority (EMA), through a Notice filed on 2009 July 6, has appealed against the judgment of Justice Mira Dean-Armorer, delivered on 2009 June 16, quashing the decision by the EMA to grant a Certificate of Environmental Clearance (CEC) to Alutrint for construction of an Aluminium Smelter in La Brea.</i> <i>As the Authority under the Environmental Management Act charged with the responsibility to balance environmental considerations with</i>

	<i>economic ones, in granting the CEC after thorough and qualified review over a period of more than two (2) years, involving consultation with the public, <u>the EMA is satisfied that it has discharged its statutory duties, that it took appropriate precautionary measures to prevent serious and irreversible damage to the environment, and that the learned judge erred in reaching her conclusions.</u></i> <i>The EMA will continue to act independently on behalf of the public."</i> (emphasis added) 4. The Respondent's case is that the EMA is independent from the Government, with a commitment for sustainable development by balancing environmental and economic considerations: Counter-Memorial, ¶ 140; LM WS, ¶ 7.2. 5. Then on the Respondent's own case, the EMA's assessment of the High Court's findings in the 2009 High Court Decision – as reflected in its internal decision-making documents, its notice of appeal, and/or other document(s) setting out the grounds of appeal – would be directly relevant to evaluating: a. whether the Project was environmentally sound; b. whether the EMA believed its original decision to grant the CEC was legally and scientifically justified; and c. whether the CEC could have been reinstated through judicial or administrative means (particularly if any deficiency identified was procedural rather than substantive). 6. The requested document(s) are therefore material to assessing the credibility of the Respondent's purported environmental justification for terminating the Project, and to the broader question of whether the termination was necessary or proportionate in light of other available remedies.
C. Responses and/or objections to document request	<u>Subcategory (1)</u> Not agreed. The class is too broad and indiscriminate. The EMA is an independent entity. It is not under the control of T&T's government. T&T would have no objection in principle to making requests from the EMA for documents, so long as the requests were narrowly confined and strictly necessary. It would not be appropriate for the Tribunal to order T&T to make requests of the EMA that would frustrate or adversely impact

	upon their proper relationship at law (or pursuant to the principles of good public administration). Any requests must therefore be narrow, targeted and necessary. It will be for the EMA to decide how to respond. Alternatively, of course, CMEC itself can ask the EMA to provide it with relevant documents. In any event, the request plainly relates to documents which are privileged and fall to be exempted from production under the IBA Rules. ¶¶ 56-63 of T&T's Preliminary Remarks to its objections refer. The request specifically seeks the EMA's internal considerations in relation to the appeal of a High Court decision. It is inappropriate for CMEC to seek documents which are privileged at all, and all the more so when that privilege belongs to a third party to the arbitration. T&T does not accept that it would be appropriate for it to ask the EMA to provide such documents for onward disclosure and objects to the request that it do so. <u>Subcategory (2)</u> T&T agrees to search for, and if found, produce this document (but only because T&T may also have the document as it would have received a copy at the time). <u>Subcategory (3)</u> T&T agrees to search for, and, if found, produce any document which was appended to or otherwise accompanied EMA's notice of appeal dated 6 July 2009 and which constitutes the basis of that appeal (but only because T&T may also have the documents as they would have received copies at the time). Any documents which were not filed with the court are by their nature privileged, and would be in the possession of the EMA. T&T objects to requesting such documents from the EMA for the reasons set out in respect of subcategory (1).
D. Replies to objections and request for resolution	<u>Sub-category (1)</u> 1. CMEC maintains this request and submits for resolution. 2. The requested document is most likely <u>one</u> single decision-making document. The Respondent's contention that it is "<i>too broad and indiscriminate</i>" is understood. 3. The appeal was withdrawn over a decade ago. There is no realistic (or any) prospect of re-litigation – the Alutrint smelter has been permanently abandoned and the CEC long expired. The rationale for litigation privilege – protecting

	strategy in live or reasonably contemplated proceedings – has evaporated. <u>Sub-category (2)</u> 4. CMEC takes note of the State's agreement to search for and produce the EMA's notice of appeal dated 6 July 2009. No reply is necessary at this stage. <u>Sub-category (3)</u> 5. CMEC takes note of the State's agreement to search for and produce any document appended or otherwise accompanying the EMA's notice of appeal "<i>which constitutes the basis of that appeal</i>". 6. On the basis of this representation, CMEC is prepared to rely on the State's undertaking and does not seek production of further documents (unless the production turns out to be insufficient, e.g. if the document(s) produced stated only the procedural basis rather than the substantive grounds of the appeal).
E. Decision of the Tribunal	The request is granted.

Document Request No	17
A. Documents or category of documents requested	Alutrint's notice of application on 7 July 2009 to join the Appeal Action (Civil Appeal No. 155 of 2009) as an interested party (to assist the State in locating the document, this document appears to be E2/156 in the ICC Proceedings). To the extent that Alutrint's application to join the appeal was approved or authorised by Alutrint's Board or at another level (internally or externally), such approving or authorising document should also be produced.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is recorded in C-0381, ¶ 221 that Alutrint filed said notice of application on 7 July 2009. 2. The application was supported by an Affidavit from Mr Leroy Mayers dated the same day [C-0193], which detailed the reasons for seeking the prompt continuation / resumption of the Project and concluded by saying "<i>Alutrint therefore urgently seeks the orders of this Honourable Court as set out in the application filed herein</i>" [C-0193, p. 13]. 3. The application should therefore be produced and be read in conjunction with Mr Mayers' Affidavit to fully understand the position taken and orders / remedies sought by Alutrint at the time. 4. Further, the application would provide necessary context for understanding Mr Mayers' Affidavit dated 7 July 2009. 5. Notably, while Mr Mayers explicitly confirms and adopts his first witness statement in the ICC Proceedings [LM WS, ¶ 2], he makes no reference to this previous Affidavit (in which he supported the continuation of the Project). This suggests a degree of selectivity or inconsistency in Mr Mayers' testimony. 6. As for the request for approving or authorising document, it will reflect Alutrint's governance and decision-making mode (following Sural's disengagement) and whether there was any coordination or alignment between Alutrint and the State in pursuing the appeal.
C. Responses and/or objections to document request	T&T agrees to search for, and if found, produce this document. As for Alutrint's documents, the Respondent relies on ¶¶ 38-43 of the Preliminary Remarks above (treating with the position of Alutrint).

D. Replies to objections and request for resolution	Sub-category (1) 1. CMEC takes note of the State's agreement to search for and produce Alutrint's notice of application dated 7 July 2009. No reply is necessary at this stage. Sub-category (2) 2. The other part of the request seeks production of documents that approved or authorised Alutrint's application to join the appeal. 3. The Respondent resists production solely on the ground that the request is "<i>for Alutrint's documents</i>" (citing Preliminary Remarks, ¶¶ 38-43). No other objection is raised. 4. <u>First</u>, as a preliminary point, the relevant approval or authorisation may have occurred at the level of: a. the State (e.g. through the Cabinet); b. Alutrint; or c. both the State and Alutrint. 5. Accordingly, the requested approving or authorising document(s) are expected to take the form of Cabinet Minutes, or Alutrint Board Minutes, or both, or potentially some other form (if the approval or authorisation was given at a different level). 6. <u>Second</u>, as to the question of possession, custody or control, State-level documents undoubtedly fall within the direct possession of the State. As for Alutrint-level documents, CMEC repeats its Overall Replies, ¶¶ 38-40 which are sufficient to demonstrate the State's effective control (if not ready possession) of Alutrint's documents. 7. For the above reasons, CMEC maintains this part of the request and submits it for the Tribunal's resolution.
E. Decision of the Tribunal	The Tribunal notes that sub-category (1) is agreed such that no order is necessary. The Respondent is ordered to exercise best efforts to obtain and produce the documents requested in sub-category (2).

Document Request No	18
A. Documents or category of documents requested	(1) The Attorney General (John Jeremie)'s application to join the Appeal Action (Civil Appeal No. 155 of 2009) as an interested party. (2) The Cabinet Minute or other decision-making document which approved, authorised or recommended that the Attorney General join the Appeal Action as an interested party.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is reported in a Guardian newspaper article dated 13 July 2009 that Madame Justice Alice Yorke-Soo Hon, presiding in Trinidad and Tobago's Court of Appeal, ordered that the Attorney General be made a party to the appeal upon his application [C-0194]. 2. Further, the MOF provided the following update in a letter dated 15 September 2009 [C-0206, p. 2]: <i>"The EMA, which is responsible for environmental protection and conservation, in the context of sustainable development – and against who 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."</i> (emphasis added) 3. It is therefore reasonable to assume that the Attorney General, having been properly authorised, made an application to join the Appeal Action as an interested party sometime in July 2009. The requested documents will confirm the timing, grounds, and internal approval of that application. 4. Similar to the observations made in relation to the EMA's decision to appeal the 2009 High Court Decision, the PNM administration's own assessment of the High Court's findings – as reflected in the Cabinet Minute (or other authorising document) and/or its application to join the appeal – is relevant to considering the soundness of the EMA's decision to grant the CEC and that of the Project generally. 5. If both the PNM and UNC administrations were relying on objective, scientific assessments, their conclusions regarding the environmental feasibility of the Project would be expected to align, or at least not diverge significantly. The fact that the PNM administration actively supported the

	appeal, while the UNC administration later terminated the Project on purported environmental grounds, raises a serious question as to whether the termination was based on a genuine reassessment of environmental risks – or whether it was politically motivated and disproportionate in light of the prior Government's position.
C. Responses and/or objections to document request	<u>Subcategory (1)</u> T&T agrees to search for, and if found, produce this document. <u>Subcategory (2)</u> Not agreed. T&T's Preliminary Remarks (¶¶ 56-58) refer. The document sought will, by its nature, constitute or reflect legal advice and T&T's approach to ongoing litigation. It will therefore plainly be privileged and T&T objects to its production.
D. Replies to objections and request for resolution	<u>Sub-category (1)</u> 1. CMEC takes note of the State's agreement to search for and produce the Attorney General's application to join the appeal. No reply is necessary at this stage. <u>Sub-category (2)</u> 2. CMEC maintains this request and submit it for resolution.
E. Decision of the Tribunal	The Tribunal notes that sub-category (1) is agreed such that no order is necessary. The request in sub-category (2) is granted. The Respondent may redact any part it asserts is privileged provided a privilege log in the form proposed by the Claimant is completed and filed.

Document Request No	19
A. Documents or category of documents requested	Any contemporaneous assessments, analyses, notes, reports, memoranda, briefs, and similar documents submitted by or to the EMA, Alutrint and/or the Attorney General concerning or demonstrating the prospect of a successful appeal against the 2009 High Court Decision, after the conclusion of the appeal hearing in November 2009.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The EMA, Alutrint, and the Attorney General (on behalf of GORTT) were all parties to the Appeal Action: EMA as appellant, and Alutrint and the Attorney General as interested parties [C-0368, ¶ 56; C-0206, p. 2]. 2. The appeal hearing ended in early November 2009 [C-0368, ¶ 56; C-0214, p. 16], during the tenure of the Patrick Manning PNM administration. 3. Given that the Project continued to progress in and after November 2009 (including the signing of the Project Agreement between GORTT and Votorantim in December 2009 [C-0218]), it is reasonable to infer that one or more of the EMA, Alutrint, and the Attorney General had formed contemporaneous assessments regarding the strength and prospects of the appeal. 4. The requested documents will shed light on whether the new UNC administration's decision to terminate the Project in September 2010 was made: a. based on an informed analysis anticipating a failed appeal and otherwise insurmountable legal or environmental obstacles; or b. despite an anticipated potential favourable legal outcome capable of enabling the recommencement of the Project. 5. This in turn bears upon the broader question of whether the termination was a necessary and proportionate response (or whether it was premature and avoidable), which is essential to assessing the Respondent's invocation of the "<i>police powers exception</i>" based on the alleged proportionality "<i>between the means employed and the aim sought to be realized</i>" [Counter-Memorial, ¶¶ 633-635]. 6. Relevantly, it is noted that throughout its submissions the Respondent relies heavily on the opinion of Mr Anand Ramlogan SC (Attorney General, 2010-2015) that "<i>the prospects of the Court of Appeal reinstating the CEC were</i>

	<i>not promising</i>" [C-0014, ¶ 127], citing this view in Counter-Memorial, ¶¶ 169, 171, 173, 572, 1023. 7. CMEC would briefly note the following in the context of document production: a. As explained in Request No. 7, ¶ 6(a)(i)-(iii) above, the paragraph containing Mr Ramlogan SC's opinion must be read in the context of his full witness statement, which may provide further detail – or reveal a lack of substantiation – for his conclusions. Hence the request for the full witness statements in Request No. 7. b. To the extent that there was any evidentiary or analytical basis for Mr Ramlogan SC's negative indication of the appeal's prospects, such underlying documents should be produced under this Request No. 19.
C. Responses and/or objections to document request	The objection to subcategory (2) of Request 18 refers.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. The Respondent's sole ground of objection is legal advice privilege and litigation privilege (citing Preliminary Remarks, ¶¶ 56-58) 3. The critical and dispositive point here is that, even assuming any privilege once existed, it has been <i>waived</i> by operation of the collateral waiver rule – through the Respondent's affirmative use and reliance on the opinion of Mr Anand Ramlogan SC (Attorney General, 2010-2015) that "<i>the prospects of the Court of Appeal reinstating the CEC were not promising</i>" throughout the Counter-Memorial (see ¶ 6 above). 4. It is well established under international arbitration practice and the IBA Rules (Article 9.4(d)) that a party cannot selectively use privileged advice to advance its case while simultaneously withholding the underlying documents or other documents on the same subject matter. 5. <i>As the Respondent has put in issue the prospect of success of the appeal and used Mr Ramlogan SC's opinion as substantive evidence to justify the proportionality and necessity of the Project's termination, fairness and equality require that CMEC be permitted to test the basis, context, and completeness of that advice.</i>

E. Decision of the Tribunal	The request is granted. The Respondent is to file a privilege log in respect of any document over which it claims privilege.
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Document Request No	20
A. Documents or category of documents requested	Any contemporaneous documents evidencing or reflecting the reason(s) for Trinidad and Tobago Court of Appeal's reserving of judgment for over 20 months, including any communications between the Government and the Judiciary relating to the timing or delivery of the judgment. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: Any contemporaneous documents evidencing or ~~reflecting~~ <u>explaining</u> the reason(s) for Trinidad and Tobago Court of Appeal's reserving of judgment for over 20 months, including any communications between the Government and the Judiciary <u>during the period from November 2009 to July 2011</u> relating to the timing or delivery of the judgment.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The appeal hearing in Civil Appeal No. 155 of 2009 concluded in early November 2009 [C-0214, p. 16], yet no judgment was delivered prior to the discontinuance of the appeal in July 2011 [C-0288] – an unusually long delay of over 20 months. 2. The 20-month delay has been noted by CMEC in Memorial, ¶ 355, to which the Counter-Memorial made no response. 3. The irregularity of this delay is underscored by two facts: a. the appeal had been deemed urgent and scheduled expeditiously for hearing [C-0194]; and b. at the conclusion of the hearing, the presiding judge indicated that the judgment, whilst reserved, "<i>will be given as soon as possible</i>" [C-0214, p. 16]. 4. During this period when the judgment remained pending, the UNC-led People's Partnership defeated the PNM in the general election held in May 2010. The new UNC Government stated publicly that it would not permit the construction of an aluminium smelter [C-0025]. 5. This request targets contemporaneous documents explaining or reflecting the reason(s) for the Court of Appeal's prolonged withholding of judgment. 6. These documents are directly relevant to understanding:

	a. whether the delay was procedural, institutional, or influenced by external factors; and b. whether the Government had any communications with the Judiciary regarding the timing or delivery of the judgment (whether in an attempt to expedite or to delay and defer). 7. These documents are therefore material to assessing whether the delay in judgment was a neutral judicial occurrence, or part of a broader pattern of conduct serving to diminish the Project's viability or justify its termination. 8. For the avoidance of doubt, this request does not seek privileged judicial deliberations, but rather any communications or administrative, procedural, or inter-institutional records that may explain the delay or reflect the surrounding circumstances.
C. Responses and/or objections to document request	Not agreed. T&T does not believe that it is in possession of any such documents. In any event, whether the delay was “procedural, institutional, or influenced by external factors” (CMEC’s stated basis (a) of relevance) is neither relevant nor material to the dispute. The judgment was delayed and the reasons for that delay would only be material if the implied allegation of CMEC’s basis of relevance (b) – that T&T may have exerted pressure on its judiciary to delay the judgment – were true. That is not, however, an issue in dispute. CMEC has not pleaded that allegation in its Memorial– presumably because it is an extremely serious and outlandish allegation for which CMEC has no evidence whatsoever. Even in its request above, CMEC seeks to couch the point in veiled wording, lest it be required to give some basis for its speculative and wholly inappropriate allegation. The closest CMEC comes in its pleading is to point to the “mystery” as to why no judgment was rendered for 20 months (Memorial, para 355). The Respondent is unable to assist as to this period of delay which is unfortunate but by no means unheard of in litigation matters – this probably just reflects the complexity of the issues. Further, as CMEC notes in its request, the appeal hearing concluded in November 2009. In May 2010, some six months later, there was a change in government. CMEC does not address the question of why the previous government would have leaned on the Court of Appeal to delay judgment, nor why the opposition party, having acceded to power, would have continued the practice. CMEC’s request amounts to a serious allegation which it has not raised properly in its pleadings and to

	which it has blatantly given insufficient thought and consideration. Yet further, the request for documents “evidencing or reflecting” such reasons is obviously too broad.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	21
A. Documents or category of documents requested	(1) EMA's internal minutes, resolutions, or other decision-making documents that approved, authorised or recommended the discontinuance of the appeal against the 2009 High Court Decision. (2) EMA's motion filed on 23 May 2011 to discontinue the appeal against the 2009 High Court Decision. (3) To the extent that the ground(s) of withdrawal were set out or reflected in other document(s), including the transcript of the hearing on the motion in July 2011, CMEC also requests the production of such other document(s). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: (1) EMA's ~~internal board~~ minutes, ~~resolutions~~, or other <u>equivalent</u> decision-making document(s) that approved, authorised or recommended the discontinuance of the appeal against the 2009 High Court Decision. Note: Only Sub-category (1) is contested. The Respondent has agreed to produce the document under Sub-category (2), which it represents has included the requested content for Sub-category (3).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Contrary to former Attorney General Mr Anand Ramlogan SC's assertion that "<i>the prospects of the Court of Appeal reinstating the CEC were not promising and indeed in November 2010 the EMA withdrew its appeal</i>" [C-0014, ¶ 137], the EMA appears to have only filed a motion to discontinue the appeal on 23 May 2011 [C-0284] – which was approximately <u>eight months after</u> the UNC administration formally renounced the Project in its budget statement in September 2010 [C-0252, p. 13]. 2. The timing of the motion to discontinue raises the question of whether the EMA's decision to withdraw the appeal was: a. a consequence of the new Government's decision to terminate the Project; or b. a reflection of a substantive assessment of the appeal's merits. 3. The current evidentiary record strongly suggests the former. As reported in Newsday, Douglas Mendes SC, Counsel for

	the EMA, explained that "<i>his client initially filed the appeal because they did not agree with the High Court's ruling, and now that the issue of the construction of the smelter plant was no longer an issue, they want to have their appeal withdrawn.</i>" [C-0289] 4. The requested documents will establish the actual timing of the EMA's motion to discontinue the appeal and the grounds therefor, including whether the EMA continued to believe in the legal and environmental soundness of its original decision to grant the CEC. 5. Factually, this will contradict the State's asserted narrative about the appeal in the ICC Proceedings. In addition to the Attorney General's witness statement (discussed above), the Solicitor General also in a letter to Sural dated 11 April 2011 misleadingly suggested that the EMA had already withdrawn its appeal by that time [C-0014, ¶ 147]. 6. Legally, this bears upon whether the State's September 2010 decision to terminate the Project was based on legitimate and substantiated environmental and health concerns (in respect of which the EMA's insights would certainly be relevant), and, in any event, whether the decision constituted a disproportionate measure that prematurely or politically foreclosed viable legal avenues.
C. Responses and/or objections to document request	<u>Subcategory (1)</u> The objections to subcategory (1) of Request 16 refer. <u>Subcategory (2)</u> T&T agrees to produce the final version of the EMA's application to withdraw the appeal, which is dated 7 June 2011. This is the court document which sought withdrawal and appears to be the document sought in this request. <u>Subcategory (3)</u> Not agreed. The EMA's grounds for withdrawal are set out in its application to withdraw, which T&T agrees to produce. There is consequently no need for T&T to search for other documents containing this ground. As to the transcript of the hearing, even if T&T were able to locate one, this request is excessive and unnecessary. The document which will be produced under subcategory 2 is plainly sufficient for the purpose CMEC describes in its request. The Respondent does not have access to

	any more material in respect of the EMA's grounds than is generally available to the parties.
D. Replies to objections and request for resolution	<u>Sub-category (1)</u> 1. CMEC maintains this request and repeats its replies in Request No. 16. <u>Sub-category (2)</u> 2. CMEC takes note of the State's agreement to produce the EMA's application to withdraw the appeal dated 7 June 2011. No reply is necessary at this stage. <u>Sub-category (3)</u> 3. CMEC takes note of the State's representation "[t]he EMA's grounds for withdrawal are set out in its application to withdraw". In reliance upon this representation, CMEC does not seek production of further documents.
E. Decision of the Tribunal	The Tribunal notes that sub-category (2) is agreed and sub-category (3) is not maintained such that no orders are necessary. Regarding sub-category (1), the request as refined is granted in part, limited to the board minutes responsive to this request.

Document Request No	22
A. Documents or category of documents requested	To the extent not covered by Request No. 21 above, any other contemporaneous documents recording or reflecting the reason(s) underlying and/or leading to the EMA's decision to discontinue the appeal in May 2011, including any communications between the Government and the EMA relating thereto. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: ~~To the extent not covered by Request No. 21 above, any other contemporaneous documents recording or reflecting the reason(s) underlying and/or leading to the EMA's decision to discontinue the appeal in May 2011, including~~ <u>any communications between the Government and the EMA relating thereto during the period from May 2010 to July 2011, in any form, that discussed, coordinated or otherwise addressed the withdrawal / discontinuance of the appeal against the 2009 High Court Decision.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The reasons stated in Request No. 21 above apply <i>mutatis mutanda</i>. 2. This request additionally captures potential "informal" documents (such as internal emails, meeting notes, or correspondence) that may shed equal or greater light on the reasons behind the EMA's discontinuance of the appeal (albeit that these "informal" reasons may not have been reflected in formal court records). 3. In this regard, it is relevant to recall Professor Kenneth Julien's evidence that he viewed the EMA's decision to withdraw the appeal as influenced by "<i>the advice of the Government</i>" [C-0387, ¶ 8.1]. 4. The requested documents will help establish whether the EMA's discontinuance of the appeal was influenced by political or policy considerations following the change in administration.
C. Responses and/or objections to document request	Not agreed. This request is self-evidently too broad. Once again, CMEC seeks to circumvent the requirements to request narrow and specific categories of documents with a "catch-all" request for any and all documents, of whatsoever nature and origin, relating

	to a given issue. T&T's Preliminary Remarks (¶¶ 4-37) and the objections to Request 11 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. The Respondent's sole ground of objection is alleged overbreadth, i.e. the request being insufficiently narrow and specific, which has been addressed.
E. Respondent's Comments on the Claimant's Reformulation of the Request	[Respondent's 26 September 2025 submission] The Claimant's request is now for a more readily definable category of documents, but a category of document to which it is not entitled. Communications between the Respondent and the EMA that discuss the withdrawal (whether actual or proposed) of the above-mentioned appeal are, by definition, communications regarding the conduct of litigation. They are consequently privileged, as set out in §58 of the Respondent's Preliminary Remarks, above. [Respondent's 2 October 2025 additional submission] The Tribunal will further note that the EMA is a third party, not under the control or operating at the direction of GORTT. Not only therefore are the documents plainly privileged, it is not even in principle for GORTT to provide documents "recording or reflecting the reason(s) underlying and/or leading to the EMA's decision to discontinue the appeal". The Tribunal may wish to consider GORTT's response to Request 16, in this context.
F. Claimant's replies to new Section E	1. The Respondent has now dropped its narrowness and specificity ground and instead raises two new grounds of objection: (1) litigation privilege; and (2) lack of possession, custody or control of the EMA's documents. CMEC will address each in turn below. 2. Before doing so, CMEC adds the following observations on relevance and materiality (in addition to Section B under Request No. 21 and the above Section B, ¶¶ 2-4 – in respect of which the Respondent has all along made no objection), based on the recent voluntary disclosure: a. The Respondent's alleged reasons for the decision to terminate the Project on 8 September 2010 included, <u>as a first ground</u>, that "<i>the prospects of the Court of Appeal reinstating the CEC were not promising and indeed in November 2010 the EMA withdrew its appeal</i>": Counter-Memorial, ¶ 173 (relying on a partial excerpt of Anand

	Ramlogan SC's witness statement in the ICC Proceedings). b. In contrast, the recent document production reveals that the EMA only filed a Notice of Application to discontinue the Appeal Action on 23 May 2011. The grounds for discontinuance were stated as follows [C-0649, pp. 3-4]:¹ <i>"On the 8th September 2010 the Minister of Finance, the Honourable Mr. Winston Dookeran, announced in his Budget presentation for 2011 that the Government of Trinidad and Tobago had decided to abandon the Aluminium Smelter Project.</i> <i>On the 1st October, 2010, the Minister of Energy and Energy Affairs, the Honourable Carolyn Seepersad Bachan, in response to a question on the Aluminium Smelter Project in the House of Representatives, confirmed that the Government of Trinidad and Tobago had decided to abandon the Aluminium Smelter Project as declared in the 2011 Budget Speech.</i> <i>There is no longer a dispute between Appellants and Respondents and issues before Court are now academic."</i> c. It is therefore apparent that the State's case on the termination of the Project is circular and lacks evidentiary foundation: it contends the limited prospect of appeal success and the EMA's ensuing withdrawal of appeal as grounds for termination, whereas the EMA itself only discontinued the appeal on the ground of mootness months after GORTT's Project cessation announcement. d. The documents sought under this request – the relevant communications between GORTT and the EMA – will directly shed light on the dynamics between them regarding the approach to the Appeal Action, including whether GORTT informed itself of the EMA's position when it made the cessation decision in September 2010, and/or whether GORTT influenced the EMA's decision to move for the discontinuance of the appeal in May 2011, thereby paving the way for its formal instruction to terminate the Project (which was issued in January 2012
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¹ To facilitate the Tribunal's review, the Claimant now submits the EMA's Notice of Application dated 23 May 2011, as amended on 7 June 2011, as factual exhibit C-0649.

	[C-0308]). These documents are clearly relevant and material. 3. <u>As to the alleged blanket application of litigation privilege:</u> a. CMEC repeats its Overall Replies, ¶¶ 60-65 (applicable law) and 69-71 (especially 70 and 71(c) – scope and limitation of litigation privilege). Further, CMEC repeats its replies under Request No. 16, Section D, ¶ 3. b. In summary, insofar as the Respondent attempts to invoke litigation privilege over documents relating to the CEC appeal in 2009-2011 (in which the EMA was the appellant and Alutrint and GORTT were interested parties), this claim is misconceived and should be rejected. The Alutrint smelter having been abandoned and the appeal withdrawn for over a decade, there is no realistic (or any) prospect of re-litigation over the long-expired CEC. The rationale for litigation privilege – protecting strategy in live or reasonably contemplated proceedings and thereby facilitating access to justice and a fair trial – has evaporated and cannot shield communications relating to a historical appeal from the present arbitration. The principles of international law require the Tribunal to maintain fairness and equality between the Parties, including having regard to the specific rationale underlying national law-oriented privileges. c. This alone suffices to dispose of the Respondent's reliance on litigation privilege over the requested documents. For completeness, CMEC adds three further points: i. Article 9.4(c) of the IBA Rules emphasises "<i>the expectations of the Parties² and their advisors at the time the legal impediment or privilege is said to have arisen</i>". This indicates that the privilege rules in the IBA Rules are intended to apply between and as against the parties to the arbitration (e.g. documents containing legal advice, litigation strategy, or settlement negotiations concerning the present dispute). The Respondent's attempt to invoke privilege to resist production of documents from <u>other</u> proceedings involving <u>other</u> parties is principally untenable, particularly where those proceedings have concluded and confidentiality of requested documents can be preserved in this arbitration. ii. Even assuming <i>arguendo</i> that litigation privilege continued to apply, it would not automatically extend
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² The "Definitions" section of the IBA Rules defines "Party" as "a party to the arbitration".

	to any "[c]ommunications between the Respondent and the EMA that discuss the withdrawal (whether actual or proposed) of the above-mentioned appeal". For litigation privilege to attach, the <i>dominant purpose</i> must be <i>obtaining advice or information for the conduct of litigation</i> (see CMEC's Overall Replies, ¶ 71(b)). Where the purpose was, for example, to convey a Government direction to discontinue the appeal, such communication plainly falls outside the scope of litigation privilege. iii. Furthermore, CMEC's observations on the waiver of privilege (if any ever existed), as set out in its Overall Replies, ¶¶ 79-80 and Request No. 19, Section D, apply <i>mutatis mutandis</i> (particularly when the relevant communications between GORTT and the EMA touched upon the merits of the appeal and its bearing on the discontinuance decision). 4. In light of the Respondent's continued practice of asserting blanket privilege, to avoid further delay in CMEC's access to relevant and material documents through unmeritorious privilege claims in the privilege log, CMEC respectfully requests that the Tribunal provide guidance in its forthcoming decisions as to the type(s) of privilege it considers inapplicable or otherwise should not be invoked for specific documents or categories of documents. 5. <u>As to the alleged lack of possession, custody or control of the EMA's documents:</u> a. This issue does <i>not</i> arise at all, as this request (as refined) seeks only the relevant communications between GORTT and the EMA – meaning that GORTT itself is a direct custodian of the requested documents. b. For completeness, as to the EMA's documents generally (when sought in other requests), CMEC repeats its Overall Replies, ¶¶ 35(c)-(d), 36, 37(b), 41-42. In summary, the Respondent should use its best efforts to obtain and produce the requested EMA documents, in line with established arbitral practice and Article 3.10 of the IBA Rules. 6. As a final note, as only recently revealed by the Respondent's 12 September document production, there were in fact <u>three related appeals</u> in respect of the Trinidad and Tobago High Court's order of certiorari quashing CEC 1033/2005 [C-0649, p. 8]:
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	a. Civil Appeal 155 of 2009 (in respect of CV 2007-02263); b. Civil Appeal 162 of 2009 (in respect of CV 2007-02257); and c. Civil Appeal 163 of 2009 (in respect of CV 2007-02272). The Respondent should comply with the substance of this request by interpreting "<i>the appeal against the 2009 High Court Decision</i>" to mean any or all of the above three appeals.
G. Decision of the Tribunal	The request as refined is granted. The Respondent is to exercise best endeavours to obtain documents from the EMA and file a privilege log with regard to any documents or parts thereof over which privilege is asserted, in the form of Annexure A or B as appropriate.

Document Request No	23
A. Documents or category of documents requested	All communications (including correspondence and meeting minutes/notes) between Alutrint and EMA relating to the appeal against the 2009 High Court Decision, including any communications concerning the withdrawal of that appeal. <u>Time range</u>: June 2009 (issuance of the 2009 High Court Decision) to July 2011 (EMA's discontinuance of its appeal). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: All communications (including correspondence and meeting minutes/notes) between Alutrint and EMA ~~relating to~~ <u>that discussed, coordinated or otherwise addressed</u> the appeal against the 2009 High Court Decision, including any communications concerning the withdrawal of that appeal. <u>Time range</u>: June 2009 (issuance of the 2009 High Court Decision) to July 2011 (EMA's discontinuance of its appeal).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As pleaded in Memorial, ¶ 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. 2. If Alutrint was kept informed of EMA's intention to withdraw the appeal, or was involved in coordinating that decision, it ought to have timely inform CMEC of this development. Failure to do so – while CMEC continued to incur costs investing in the Project under the assumption that the appeal was ongoing – would demonstrate a lack of transparency and good faith. It also effectively deprived CMEC of the opportunity to proactively plan its exit strategy and prepare its claims. 3. Correspondence between Alutrint and EMA may also reveal whether decisions relating to the appeal and the withdrawal of appeal were made independently by EMA or in consultation with relevant State actors.
C. Responses and/or objections to document request	Not agreed. First, the request is for Alutrint documents. Alutrint documents are not the Respondent's documents. The Respondent relies on

	the Preliminary Remarks, those paragraphs treating with this issue. Furthermore, there is a privilege issue: T&T's Preliminary Remarks, at ¶¶ 56-58, refer. The request concerns privileged and confidential communications between Alutrint and the EMA in relation to court proceedings in which they had a common interest. By the very nature of the documents requested, all responsive documents are privileged and CMEC is not entitled to their production. This is particularly the case where the privilege in those documents belongs equally to the EMA and to Alutrint, on behalf of which T&T has no right to waive that privilege. Further, "all communications" "relating to" the appeal is plainly unacceptably broad.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. The State made an unsubstantiated and blanket assertion of common interest privilege. 3. As the IBA Privilege Task Force observes, "<i>common interest privilege is <u>not</u> a freestanding form of privilege</i>"; in other words, it "<i>does <u>not</u> constitute a new category of privilege</i>" but only "<i>enables parties to <u>share material that is already privileged</u> with third parties with whom they have a requisite common interest, and to do so without waiving privilege</i>".³ 4. Further, it is doubtful whether the requisite "common interest" arose in the first place. Jurisdictions interpret "common interest" differently (e.g. the IBA Privilege Committee notes that in Kansas, USA, "<i>the nature of the interest be identical, not similar, and be legal, not solely commercial</i>").⁴ The Respondent did not explain, let alone substantiate, the position under Trinidad and Tobago law at all. 5. The EMA's interest lied on defending its CEC process or decision-making, while Alutrint as the project company had a self-interested stake in the reinstatement of the environmental clearance interest. Their legal interest was not entirely aligned – which is exactly the reason why the EMA was the appellant/defendant while Alutrint only applied to join the proceedings as an interested party [see C-0193, p. 1].

³ **CL-0162**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, p. 98 (Annex 6, ¶ 1.3).

⁴ **CL-0162**, 'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration, p. 106 (Annex 6, ¶ 3.2.2).

	6. Communications such as "please be informed that the EMA has withdrawn the appeal" cannot possibly be captured by common interest privilege.
E. Decision of the Tribunal	The request as refined is granted. The Respondent is to exercise best endeavours to obtain documents from Alutrint and file a privilege log with regard to any documents or parts thereof over which privilege is asserted, in the form of Annexure A or B as appropriate.

Document Request No	24
A. Documents or category of documents requested	Documents evidencing or reflecting: (1) The status of the re-application with the EMA for a new CEC as of: (a) the change of government in May 2010; and (b) the UNC Government's public renunciation of the Project in September 2010. (2) When and how the CEC re-application with the EMA was ceased. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC adds the following clarification on the scope of the request: <u>"CEC" refers to the CEC (Certificate of Environmental Clearance) for the 125,000 mtpy aluminium smelter in Phase I of the Project.</u> <u>"Evidencing" refers to documents that directly prove or demonstrate the matters in question.</u> <u>"Reflecting" refers to documents that indicate or reveal an understanding or awareness of these matters, even if they are not direct evidence.</u> <u>The Claimant does <i>not</i> seek duplicative production. If documents directly evidencing (1) and (2) are available, production of documents that indirectly reflect the same is not requested. However, in the absence of direct evidence, documents falling within the "reflecting" category should be produced.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As reflected in C-0194 and C-0207 (and summarised in Memorial, ¶ 307 and Annex 7, p. 5), when the EMA was pursuing the judicial appeal to reinstate the original CEC, the State was concurrently preparing for a re-application with the EMA for a new CEC to cure any alleged procedural deficiencies – demonstrating a dual-track strategy aimed at enabling the earliest possible recommencement of the smelter's construction. 2. The process of reapplication had been commenced since no later than September 2009 [C-0207]. 3. Broadly, the requested documents are relevant to determining whether the decision to terminate the Project, allegedly

	(partly) due to the lack of a valid CEC, was made prematurely, at a time when the administrative re-application process could have provided a viable path forward for the Project. 4. More specifically: a. Sub-category (1) will show how far the re-application process had progressed at the relevant times, and whether the State engaged (or failed to engage) in good faith efforts to preserve or progress the Project. b. Sub-category (2) will reveal whether the UNC Government, upon taking office in May 2010, actively abandoned or obstructed the efforts to pursue a new CEC, thereby foreclosing the possibility of continuation even before its formal termination decision in September 2010. 5. These materials are critical to assessing whether the termination was a genuinely necessary and proportionate measure, or whether it was a politically motivated decision taken despite the availability of lawful and practical alternatives.
C. Responses and/or objections to document request	Not agreed. The possibility of a new CEC being sought, and the likelihood of it being granted, can be matters of no more than mere speculation. The parameters of the Project had, in any event, moved on in the light of the anticipated increase to the smelter size. So a fresh application for a CEC would have needed to address the concerns about consultation, the impact of a new smelter size, and the concerns about the combined environmental impact of the project (see Counter-Memorial ¶¶181 and fn86(a). See also ¶¶163-166 for a short summary of what the High Court found). The Respondent anticipates that it would be time-consuming and difficult at this late stage to seek to recover documents on this issue. It is not clear, in any event, what steps were taken if any with respect to a fresh application. The Respondent understands that no application in fact was filed. Further, the request for documents “evidencing or reflecting” those matters is clearly too broad.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution.

E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.
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Document Request No	25
A. Documents or category of documents requested	Cabinet Minute of 21 April 2005 <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	<i>General comments on Cabinet Notes and Cabinet Minutes (with respect to Requests Nos. 25 to 37)</i> 1. Cabinet Notes and Cabinet Minutes are two related but distinct categories of documents in Trinidad and Tobago [C-0513, p. 1]: a. <u>Cabinet Notes</u>: Submissions from all Ministers of Government for consideration by the Cabinet. b. <u>Cabinet Minutes</u>: Decisions of the Cabinet that are transmitted to the relevant public authorities for implementation. 2. In other words, the Cabinet Notes contain the substantive submissions that form the basis of the Cabinet's consideration, whilst the Cabinet Minutes reflect the final decisions taken. 3. As pleaded in Memorial, ¶ 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 – none of which have been voluntarily disclosed by the Respondent by now and which are individually requested below. 4. In addition, CMEC requests the production of the corresponding Cabinet Notes. This is because: a. Cabinet Minutes may cross-refer to Cabinet Notes (including the underlying submissions and supporting materials). Cabinet Notes will provide the necessary context for understanding the decisions recorded in Cabinet Minutes. b. This is particularly so where Cabinet Minutes are brief, formulaic, or limited to recording outcomes. In such cases, the Cabinet Notes may be the only contemporaneous documents that provide a comprehensive account of the issues considered, the options evaluated, and the reasoning adopted – this concerns a live issue in this arbitration as the Respondent has contended as part of its defence that its decision about the Project was based on "<i>reasoned judgment</i>" [Counter-

	Memorial, ¶ 924] or "<i>a thorough and sober consideration of all relevant matters</i>" [Counter-Memorial, ¶ 574]. c. Cabinet Notes may also reveal the underlying assumptions in the Cabinet's decision-making. This is directly relevant to a major argument raised by the Respondent: namely, that its dealings with CMEC and decisions concerning the Project were made solely in its capacity as a 60% shareholder of Alutrint, and not in the capacity of Trinidad and Tobago as a sovereign state [Counter-Memorial, ¶¶ 93, 214]. This purported distinction (if it exists) may not necessarily be evident from Cabinet Minutes, which typically record only final decisions. By contrast, Cabinet Notes – through which Ministers formally engage the Cabinet – are far more likely to reflect whether the State was acting in a shareholder or sovereign capacity. Their disclosure is therefore essential to testing the Respondent's position and to establishing the true nature of the State's conduct. <i>Relevance and Materiality of Request No. 25</i> 5. This Cabinet Minute of 21 April 2005 (immediately preceding Alutrint's Board Meeting No. 001 on 22 April 2005, see Request No. 48 below) approved the proposal for a vertically integrated Project comprising the smelter and the downstream facilities [C-0369, ¶ 26]. 6. It reflects and records the early-stage developments of the Project. Other matters covered appear to include [C-0369, ¶ 15]: a. tasking the NEC for evaluating the project economics; b. drafting a shareholders' agreement in which NEC would take a 60% share and Sural would take a 40% share; c. identifying a site for the smelter and rod mill; and d. entering with Sural into negotiations with CMEC for the smelter technology and a lump sum turnkey contract for the 125,000 mtpy smelter. 7. The original Cabinet Minute and its corresponding Cabinet Note(s) are more reliable and probative than summaries or secondary accounts produced elsewhere. Derivative materials may be subject to the risk of reinterpretation, omission, and/or editorial bias. <i>This comment applies similarly to all other requests for Cabinet Minutes and Notes and Board Minutes and Papers.</i>
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C. Responses and/or objections to document request	Not agreed. There is no prospect of the requested documents being material to the outcome. T&T approved the Project and the actions described in the request took place. There is no factual dispute over that – it is an agreed fact. Cabinet documents reflecting these facts are therefore not probative of any point in dispute. The request therefore falls well short of the requirement of materiality to the outcome of the proceedings. It would also be unduly burdensome for T&T to produce the documents, given the need to (i) find these historical records, which are likely to be in paper form, and (ii) then undertake a process of review and redaction, to remove all content which does not relate to the request (inevitably, unrelated topics will have been discussed at the relevant cabinet meeting) and to remove any content that is confidential or of special political sensitivity (IBA Rules, Article 9(2)(f)). Inevitably, Cabinet Notes and Cabinet Minutes will contain material that is privileged or otherwise politically sensitive and confidential. This will be a time-consuming task, which is not justified where the document produced would evidence only those events which the parties already agree took place. In the circumstances, this request is, at best, a fishing expedition for CMEC, and at worst, it is simply intended to make work for T&T. The Tribunal may bear in mind the importance ascribed by the common law (which applies in Trinidad and Tobago) to these sorts of documents and their confidential nature. Cabinet minutes are not usually disclosable, on the grounds that to do so would interfere with the important doctrine of joint responsibility: “The maintenance of the doctrine of joint responsibility within the Cabinet is in the public interest, and the application of that doctrine might be prejudiced by premature disclosure of the views of individual Ministers” (Lord Widgery CJ, <i>AG v Jonathan Cape Ltd</i> [1976] QB 752). It is part of the relevant context to appreciate that such documents are treated extremely carefully in the national legal order and for reasons that go to the heart of the democratic processes of government. The Tribunal should exercise some caution in ensuring that the requests made by CMEC do meet all of the necessary criteria and are carefully trained on documents the disclosure of which really is likely to have a material impact on the claim. Request 25 does not meet these requirements.
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D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to burden, privilege, confidentiality and sensitivity</u>, CMEC refers the Tribunal to its Overall Replies, ¶¶ 9-12. 3. <u>As to relevance and materiality</u>, CMEC takes issue with the State's general approach to treat fact findings in the ICC Proceedings as "<i>agreed fact</i>" <u>between the State and CMEC</u>. CMEC is not privy to the ICC Proceedings and therefore has had no means to verify or correct or supplement the factual record there. 4. Given the overlapping facts but different factual focuses in the two proceedings, it is likely that the secondary or derivative summaries in documents from ICC Proceedings (including the ICC Award) may not have captured all relevant and material information for the purposes of the present dispute. The emphasis and omissions may well be different if one looks at the same document for different purposes / from different perspectives. 5. CMEC therefore requests the production of the original records – which are more reliable and probative, and which may (well) contain additional relevant information. 6. For the avoidance of any doubt and to facilitate focused production, CMEC confirms that, for Requests Nos. 25 to 37, the Cabinet Notes sought are limited to those referred to in the specific Cabinet Minute identified in the request.⁵ Put differently, if the Cabinet meeting on the relevant date addressed other matters that are not the subject of the requested Cabinet Minute, the Cabinet Notes relating to those unrelated matters do not need to be produced.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

⁵ In each request, the requested Cabinet Minute's date and minute number (where available) are included in Section A, with its content further described in Section B.

Document Request No	26
A. Documents or category of documents requested	Cabinet Minute of 15 March 2007 (Cabinet Minute No. 610) <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. <u>CMEC 12/09/2025</u> : The requested Cabinet Minute is E1/44 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Cabinet Minute sanctioned the Project at an estimated cost of US \$552 million (including the combination of US \$400 million debt financing and US \$140 million equity financing for the US \$540 million Phase I); referred to the 2005 EPC Contract with CMEC; approved the Unanimous Shareholders' Agreement between GORTT and Sural; and authorised the MOF to enter into the contract on GORTT's behalf [C-0014, ¶¶ 49, 60, 82].
C. Responses and/or objections to document request	The objections to Request 25 refer. The relevance of these documents is not understood – they were not said to be material to the resolution of any issues in dispute.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Request No. 25. 3. This set of Cabinet Minute and Cabinet Note, along with many other Cabinet Minutes which recorded other decisions for the Project at various stages of its lifecycle, strongly evidence the State's direct control of and decision-making over the Project.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	27
A. Documents or category of documents requested	Cabinet Minute of 21 February 2008 <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. <u>CMEC 12/09/2025</u>: The requested Cabinet Minute is E1/97 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Cabinet Minute approved the severance of the smelter and the downstream elements of the Project, involving a renegotiated contract with CMEC at a substantially increased price (of US \$516 million) for just the smelter element; and approved pursuing negotiations with Sural for the downstream aspect of a revised project [C-0014, ¶ 101; C-0388, ¶ 26] 2. This decision foreshadowed and paved the way for the 2008 EPC Contract – for a restructured Project without Sural participation. It also reflected the renegotiated contract scope and price by that time (likely accompanied by reasons explaining why an increase of the EPC price to US\$ 516 million was considered acceptable).
C. Responses and/or objections to document request	The objections to Request 25 refer. The relevance of these documents is not understood – they were not said to be material to the resolution of any issues in dispute.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 25 and 26. 3. Further, as explained in Section B, ¶ 2 above, this set of requested Cabinet Minute and Cabinet Note is likely to contain further details regarding the composition and justification for the EPC price increase.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	28
A. Documents or category of documents requested	Cabinet Minute of 15 May 2008 (Cabinet Minute No. 1233) <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. <u>CMEC 12/09/2025</u>: The requested Cabinet Minute is E1/108 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Cabinet Minute addressed among other matters [C-0381, ¶ 174; C-0153]: a. the approval of the appointment of a "Project Team" chaired by Professor Kenneth Julien and comprising Mr Andrew Jupiter, Ms Alison Lewis and Mr Leroy Mayers to: i. prepare the request for a revised bid from CMEC and evaluate the tender from CMEC; and ii. develop a strategy for Sural's disengagement and prepare the request for proposals for potential new partnership and evaluate any responses. b. the authorization of Alutrint to proceed with the PDC works and some other activities. 2. These instructions were then transmitted by the MEEI to Alutrint CEO on 9 June 2008 [C-0153].
C. Responses and/or objections to document request	The objections to Request 25 refer. The relevance of these documents is not understood – they were not said to be material to the resolution of any issues in dispute.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 25 and 26.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	29
A. Documents or category of documents requested	Cabinet Minute of 7 August 2008 (Cabinet Minute No. 2212) <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. <u>CMEC 12/09/2025</u>: The requested Cabinet Minute is GORTT Pages 970-974 (as cited in C-0369, ¶ 87) in the ICC Proceedings. This means that the State has submitted this document as a factual exhibit which formed part of Bundle E in the ICC Proceedings (although its exact hearing bundle reference is not readily ascertainable from the currently available documents).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Mr Leroy Mayers stated that the proposals from two potential replacement joint venture partners – Century Aluminium and Votorantim – were considered and compared at a Cabinet meeting of 7 August 2008 (as recorded in Cabinet Minute No. 2212) [C-0369, ¶ 87]. 2. What is likely to be of greater relevance for the purposes of the present arbitration is that this Cabinet meeting may have also approved the revised EPC contract price with CMEC and authorised the negotiation of the revised EPC contract. This is suggested by the letter dated 7 August 2008 from Professor Kenneth Julien to CMEC [C-0156], which states: <i>"I have been informed that the Government has accepted the recommendation of the Standing Committee on Energy that the CMEC Proposal at the revised cost of US \$450 million for the EPC Contract of the Aluminium Smelter (without the Anode Plant) but including Cast House.</i> <i>On this basis Alutrint has been authorized to negotiate the revised EPC Contract with CMEC with the intention of completing such negotiations before the end of August.</i> <i>With this approval CMEC and Alutrint can now proceed with full mobilization for the Phase I Project.</i> [...] <i>There is now a great deal of work to be done and 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."</i>

	3. The Cabinet Minute and corresponding Cabinet Note(s) are likely to provide more details on the basis of the revised EPC price, and will evidence that Alutrint's authority to proceed with CMEC was directly derived from Cabinet-level decisions (supporting CMEC's position that the State exercised direct control over key contractual and project decisions).
C. Responses and/or objections to document request	The objections to Request 25 refer. The revised EPC contract price was agreed. That fact is not in dispute. Cabinet documents demonstrating the same cannot therefore have any material effect on the outcome of proceedings. It is also impossible to see how these documents could be relevant to, not to mention material to the outcome of, the issue of attribution. The authorisation is wholly consistent with T&T being the 60% shareholder of Alutrint: see how CMEC habitually seeks to ignore this fact in, e.g. Section H3.2 of the Memorial, ¶¶417-425.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 25 and 26. 3. The documents will speak for themselves as to whether the State acted in a mere 60% shareholder capacity or was in full and direct control of the Project.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	30
A. Documents or category of documents requested	Cabinet Minute No. 2814 <u>and</u> the Cabinet Note dated 6 October 2008. <u>CMEC 12/09/2025</u>: The requested Cabinet Minute and Cabinet Note are respectively E2/128 and E2/127 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Cabinet Minute approved the 2008 EPC Contract with CMEC for a 125,000 mpty smelter [C-0014, ¶ 117]. 2. Relevantly, the State emphasised in the ICC Proceedings that the 2008 EPC Contract was directly approved by the Cabinet (and by Cabinet only) – not ever put to Alutrint's board for approval, reflecting Sural's disengagement from the Project [C-0381, ¶¶ 197-198, 312(3)].
C. Responses and/or objections to document request	The objections to Requests 25 and 29 refer. CMEC states that it is “relevant” that the 2008 EPC Contract was not put to the full Alutrint board (including Sural representatives), but rather, was directed to cabinet for approval by the board members representing T&T (as a shareholder) on the Alutrint board. CMEC does not explain this alleged relevance and what the documents will add to the facts known to the parties. It certainly does not follow that the content of the cabinet minutes of notes will be different in any way as a result. As CMEC identifies in its request, the sole relevance of this cabinet minute to the proceedings is that it approved the 2008 EPC Contract. The approval of that contract is an agreed fact in the proceedings and the requested documents therefore have no materiality whatsoever to the outcome of the proceedings. Again, CMEC is embarking upon a fishing expedition or train of enquiry – neither of which is permitted.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 25, 26 and 29.
E. Decision of the Tribunal	The request is granted.

Document Request No	31
A. Documents or category of documents requested	Cabinet Minute of 8 September 2010 <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. To the extent that the Cabinet Note of 16 July 2010 [C-0248] was among the materials considered, it is unnecessary for the State to (re-)include this document in its production.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Mr Leroy Mayers confirmed that the decision to discontinue the Project with immediate effect was made at a Cabinet meeting of 8 September 2010 [C-0369, ¶ 114]. 2. However, the Respondent has chosen not to provide the Cabinet Minute of that meeting. 3. Instead, the Respondent relies solely on an extract from Mr Anand Ramlogan SC's 2014 witness statement [Counter-Memorial, ¶¶ 173, 644], where he "<i>explain[ed]</i>" that the reasons for termination were as follows [C-0014, ¶ 137]: <i>"(a) There was in fact no project because of lack of CEC approval and the prospects of the Court of Appeal reinstating the CEC were not promising and indeed in November 2010 the EMA withdrew its appeal;</i> <i>(b) There were concerns about the issue of HF standards and whether the revised project (250,000 metric tonnes per year) would be able to comply with the required HF standards;</i> <i>(c) There were concerns about the economic viability of the project"</i> 4. It is clear from the language that Mr Ramlogan SC was not even quoting the Cabinet Minute, but rather offering his own understanding of various matters – the accuracy of which, as noted in several requests above, is open to serious question. 5. The Respondent then argues in the Counter-Memorial that the Cabinet Note of 16 July 2010 should be treated as definitive evidence of the factors <u>considered</u> and <u>not considered</u> by the Cabinet in its 8 September 2010 decision. At ¶ 574, it asserts that political motivation played no role because: <i>"The T&T government's decision to discontinue the Project was made in light of the Ministry of Energy and Energy Affairs' Note for Cabinet of 16 July 2010 [C-0248]. Whatever statements were made in the</i>

	<i>public, political sphere, the Note for Cabinet makes it crystal clear that the decision was made in the light of a thorough and sober consideration of all relevant matters."</i> 6. Similarly, at ¶ 687(3), the Respondent asserts that there was no discrimination against CMEC because the Cabinet Note did not indicate any such intent. 7. These are mere assertions. The Cabinet Minute of 8 September 2010 – which records the "formal" reasons underlying the Cabinet's decision to terminate the Project – must be produced to allow CMEC and the Tribunal to assess whether there is any substance to the Respondent's contentions. 8. It is also questionable whether the Cabinet Note of 16 July 2010 was the Cabinet Note, or the sole Cabinet Note, considered at the 8 September 2010 meeting, given that it was prepared nearly two months earlier. The production under this request should therefore also include the actual or other Cabinet Note(s) considered at the meeting.
C. Responses and/or objections to document request	Without prejudice to the objections in Request 25, no objection if the requested documents are in T&T's possession, custody or control, with appropriate redactions (if any).
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to produce the requested documents (which are plainly in its possession, custody or control), "<i>with appropriate redactions (if any)</i>". 2. Pending receipt and review of the documents, CMEC expects that, should the State apply any redactions, the redactions should be limited to the grounds stated in, and be applied in accordance with, PO1 § 15.6 ("<i>identifying <u>the contents being redacted</u> and <u>the grounds for redaction</u></i>"). 3. In this regard, as provided in PO1 § 15.6, CMEC reserves its right to challenge any inappropriate and/or unexplained redactions and to submit such challenge for a decision by the Tribunal, if necessary.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the documents from Alutrint and to file a privilege log for any redactions made on the basis of privilege.

Document Request No	32
A. Documents or category of documents requested	Cabinet Minute of around 9 January 2012 <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Following the Cabinet meeting on 8 September 2010, then Finance Minister Winston Dookeran publicly renounced the Project in his budget speech on the same day [C-0252, p. 13]: <i>"[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."</i> 2. As set out in Memorial, ¶¶ 329-333, the termination decision, as well as the manner in which it was made and delivered, provoked significant public criticism and calls for reconsideration within Trinidad and Tobago. 3. Indeed, it appears that the State might have subsequently engaged in some reconsideration of the matter, resulting in a deferral of the implementation of its 8 September 2010 decision. As noted by Mr Philip Julien (Alutrint CEO) in his exit report of 30 October 2011 [C-0300, p. 4]: <i>"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 project/contract termination [...]" (emphasis added)</i> 4. The formal instruction to terminate the Project was only issued on 9 January 2012, when Mr Leroy Mayers, on behalf of the MEEA, wrote to Alutrint in the following terms [C-0308]: <i>"I wish to refer to Government's articulated intention in the September 2010 Budget Presentation to discontinue the Alutrint Smelter Project.</i> <i>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.</i> <i>Please be guided accordingly." (emphasis added)</i>

	5. The phrase "<i>Government agreed</i>" suggests the existence of a Cabinet decision – in the form of a Cabinet Minute – taken <u>after</u> the 8 September 2010 budget presentation (and likely not long before the MEEA's 9 January 2012 letter), in which the Cabinet formally resolved to instruct Alutrint to cancel the Project. 6. CMEC is therefore requesting the production of this Cabinet Minute and its corresponding Cabinet Note(s). They will explain the reasons and circumstances surrounding the final termination of the Project. 7. Relevantly, CMEC notes that this final decision – made without offering CMEC any opportunity to be heard – was taken after CMEC had repeatedly expressed its continued belief in the feasibility and safety of the Project, and had in good faith continued its investment in the Project (in the form of site maintenance services) for over a year in order to preserve the possibility of recommencement: Memorial, ¶¶ 335-336, 348. 8. CMEC's efforts and the impact of the termination decision on CMEC may well be reflected in the content of the requested Cabinet Minute and Cabinet Note, particularly in relation to the Government's awareness of CMEC's position and the consequences of its decision.
C. Responses and/or objections to document request	The objections to Request 25 refer. The existence of this alleged Cabinet Minute appears to be no more than speculation and of no serious relevance to the issues in the claim. The parties agree on the government decision, when and how it was made. This is what matters, not speculation about some possible later meeting that may or may not have taken place and may or may not have reconsidered some aspect of the decision.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Request No. 25. 3. It is clearly evidenced in the contemporaneous evidence that the State passed a decision to formally terminate the Project around January 2012 – it is not speculative, but <i>highly probable</i>. 4. Compared to the September 2010 decision, the January 2012 decision was the decision that has led to implementation, i.e. the actual termination of the Project. Its relevance and materiality cannot be overstated.

E. Decision of the Tribunal	The request is granted.
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Document Request No	33
A. Documents or category of documents requested	(1) Cabinet Minute in or around October 2012 in which the Cabinet decided to discontinue the Project <u>and approve no alternative project</u> (2) Cabinet Note(s) considered at the aforesaid Cabinet meeting (3) MEEA's letter to Alutrint in October 2012, informing Alutrint of the State's decision and instructing the settlement of ensuing liabilities
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in Alutrint's 2011 and 2012 audited financial statements dated 20 March 2014 [C-0373, p. 27; C-0374, p. 24]: <i>"In October 2012, the Ministry of Energy and Energy Affairs informed the Company that the Government of the Republic of Trinidad and Tobago has decided that the Alutrint Aluminum smelter Project be discontinued and that no other project has been approved. The Ministry also instructed that all obligations, legal, contractual and otherwise associated with the project be settled accordingly."</i> 2. This request is formulated to capture the documents based on which the auditors included this statement in the financial statements. These documents are reasonably expected to exist given the serious nature of audited financial statements. 3. The October 2012 Cabinet decision and related instructions to Alutrint will provide further insight into the State's final position on the Project and its position on the settlement of ensuing liabilities.
C. Responses and/or objections to document request	The response to Request 32 is repeated <i>mutatis mutandis</i>, and the objections to Request 25 refer. The words “and that no other project has been approved” appear to be no more than a statement as to the contemporaneous position (i.e. that as of that date no alternative project had been confirmed). This is an agreed fact. Otherwise, the decision had already been taken to end the Project. The request is therefore speculative and immaterial.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 25 and 32 apply <i>mutatis mutandis</i>.

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	3. CMEC highlighted the "approve no alternative project" part because it represented a deviation / departure from the State's position as stated in the September 2010 budget announcement (i.e. to terminate Alutrint Project but put alternative strategy in place for the Project site). It also points to the existence of another Cabinet decision that has further considered the Project and related follow-up actions (thus this request).
E. Decision of the Tribunal	This request is granted.

Document Request No	34
A. Documents or category of documents requested	Cabinet Minute of 13 February 2014 <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting. Relatedly, to the extent not reflected in the above Cabinet Minute and Note, CMEC also requests the production of documents evidencing the time of establishment and the composition of the "committee" and the "team".
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in the Hansard report of 2 December 2016 [C-0045, p. 27]: <i>"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."</i> 2. The requested documents are directly relevant to understanding the State (2010-2015 UNC administration)'s approach to resolving CMEC's claims following the termination of the Project. They will shed light on, among other matters: a. the State's intention and strategy in relation to the review of CMEC's claims and the settlement thereof; and b. the scope and mandate of the "committee" and the "team", including whether they were empowered to engage substantively with CMEC (which may explain the lack of progress in the subsequent discussions). 3. Documents evidencing the time of establishment and the composition of the "committee" and the "team" are further necessary to assess whether the State took meaningful steps toward settlement, or whether it failed to act in good faith despite having committed to a resolution through this mechanism [C-0036, p. 1 – noting that at the 26 February 2014 meeting with the Energy Minister CMEC was advised of the State's appointment of a negotiating team but did not subsequently receive a communication regarding the composition of the team].

C. Responses and/or objections to document request	Not agreed. T&T's Preliminary Remarks at ¶¶ 59-60 and the objections to Request 5 refer. CMEC itself states that the documents requested are relevant to T&T's consideration of the settlement of CMEC's claim. Evidently, they are therefore documents created "<i>in connection with and for the purpose of settlement negotiations</i>" and T&T objects to their production in accordance with the protection afforded to such privileged material. Further and in any event, the fact that the state considered CMEC's claims is obvious and not in dispute. CMEC itself acknowledges that meetings took place between T&T and CMEC. As such, the claimed relevance and materiality is denied. The factual activities and discussions between the parties in pursuit of settlement are known to both sides; these cabinet documents would therefore add nothing and would not be material to the outcome of the arbitration. Further, insofar as the requested documents contain information which shows "the State's intention and strategy in relation to the review of CMEC's claims and the settlement thereof", these matters are plainly privileged. Yet further, given that the amount CMEC now claims against T&T has been slashed to US\$156 million from over US\$300 million (the claims against Alutrint and then T&T initially in the Request for Arbitration), any alleged bad faith on behalf of T&T is fanciful: Counter-Memorial, ¶12. The documents requested would not be material to the outcome. Otherwise, the objections to Request 25 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to assertion of privilege</u>, CMEC refers the Tribunal to its Overall Replies, ¶¶ 73-76 regarding the scope and limitation of without prejudice privilege. 3. "<i>Relevant to T&T's consideration of the settlement of CMEC's claim</i>" falls far short from the requirement of "<i>in connection with and for the purpose of settlement negotiations</i>". The document must be created specifically for the purpose of confidential settlement negotiations, not merely related to them in a general or tangential way. A vague or hypothetical intention to use the document in some future settlement context is insufficient to attract privilege. 4. <u>As to relevance and materiality</u>, CMEC reiterates the reasons given in Section B above.

	5. The argument that a reduction in CMEC's claim amount negates any bad faith on the part of T&T is a red herring and frivolous. It suffices to point out that the Respondent has decided on sit on the claim documents and never communicated any quantum comment or disagreement to CMEC during the decade-long claim negotiations (until its bifurcation submissions in this arbitration in April 2024).
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	35
A. Documents or category of documents requested	Cabinet Minute of around November 2016 (in which the Cabinet approved the establishment of a Committee to review the outstanding issues regarding the Project [C-0053]) <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in the MOF's letter to CMEC dated 30 November 2016 [C-0053]: <i>"Please be advised that the Government of the Republic of Trinidad and Tobago has approved a Committee, headed by the Permanent Secretary, Ministry of Finance, together with the Permanent Secretary, Ministry of Energy and Energy Industries and appropriate representatives from the Ministry of Energy and Energy Industries to review the outstanding issues regarding the Alutrint Aluminium Smelter Project."</i> 2. It is therefore reasonable to assume that a Cabinet Minute and related Cabinet Note(s) exist, documenting the PNM administration's approval and appointment of a reconstituted committee to review CMEC's claims in or around November 2016. 3. As with the documents requested in Request No. 34 concerning the UNC administration's appointment of a review committee, the documents requested here are directly relevant to understanding the State's approach under the 2015-2025 PNM administration to resolving CMEC's claims. 4. They may also record any analysis or findings inherited from the prior UNC-appointed committee, which would shed light on whether the new administration built upon or disregarded earlier efforts. 5. The fact that a new committee was established by a different administration reflects the State's continued acknowledgment of unresolved liabilities to CMEC and suggests that the matter remained active and politically relevant across successive governments – as will be further substantiated by the requested Cabinet Minute and Note(s).
C. Responses and/or objections to document request	The objection to Requests 25 and 34 refers. The Project had been terminated several years before the relevant cabinet meeting. The “outstanding issues around the project” were clearly those relating to CMEC’s claims for compensation. As set out above, the requested documents were (to the extent disclosable and relevant to the proceedings) created for the purpose of settlement discussions and are not properly subject to production to CMEC.

	T&T's "analysis and findings" in respect of settling the claims or its "approach to resolving CMEC's claims" are by their nature matters on which any documents would inevitably be privileged. Again, as with Request 34, the documents also have no prospect of being material to the outcome of the dispute. CMEC states that "the fact that a new committee was established... reflects the State's continued acknowledgment of unresolved liabilities to CMEC." Leaving aside that this is a pleading and does not directly address the relevance and materiality of the requested documents, it also illustrates the irrelevance of the requested documents. The fact of the committee's establishment is what is (according to CMEC) relevant to the dispute. That fact is established. No documents are necessary to prove it.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 25 and 34 apply <i>mutatis mutandis</i>. 3. CMEC also reiterates the reasons of relevance and materiality given in Section B above.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	36
A. Documents or category of documents requested	If different from Request No. 35, Cabinet Minute of around November 2016 (in which the Cabinet authorised Prime Minister Dr Keith Rowley to make a statement to Parliament on the status of the Alutrint Aluminium Smelter [C-0045, p. 24] and authorised the Committee to engage legal counsel to advise on CMEC's claim [C-0045, pp. 28-29]) <u>and</u> the Cabinet Note(s) considered at the aforesaid Cabinet meeting.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in the Hansard report of 2 December 2016 [C-0045, pp. 24, 28-29] <i>"The Prime Minister (Hon. Dr. Keith Rowley): Madam Speaker, the Cabinet has authorized me to make the following statement on the status of the Alutrint Aluminium Smelter.</i> [...] <i>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."</i> 2. Given the proximity in timing, this appears to be referencing the same Cabinet meeting in which the State approved the establishment of the Committee (see Request No. 35 above). 3. However, to the extent that there was a separate Cabinet meeting which authorised Prime Minister Rowley's parliamentary statement and the Committee's engagement of a legal expert, CMEC requests the production of the corresponding Cabinet Minute and Note(s). The reasons stated with respect to Request No. 35 apply <i>mutatis mutandis</i>.
C. Responses and/or objections to document request	The objections to Requests 25, 34 and 35 refer. Any suggestion that documents relating to Alutrint's (or T&T's) instruction of legal advisors are not privileged is farcical. Further, the fact of a party instructing legal counsel has no probative value whatsoever. This request is a brazen fishing expedition by CMEC, made more unreasonable by its obvious targeting of privileged material.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution.

	2. CMEC's replies in Requests Nos. 25 and 34 apply <i>mutatis mutandis</i>. 3. Further, a Cabinet Minute which authorised/approved the hiring of legal counsel is not likely to reveal the (yet-to-be-developed) instructions to that legal counsel, and is not privileged.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	37
A. Documents or category of documents requested	To the extent not covered by the above requests, any other Cabinet Minute and/or Cabinet Note which addressed, assessed, or otherwise reviewed CMEC's claim in relation to the Project (including the settlement or negotiation thereof or other response strategy thereto).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC has individually identified the Cabinet Minutes and Cabinet Notes that should have addressed / assessed / reviewed CMEC's claim in the preceding requests. 2. However, given the long-running history of the dispute, CMEC reasonably believes there to be (likely much) more such Cabinet Minutes and/or Cabinet Notes. This request seeks to capture additional Cabinet-level documents that directly dealt with the outstanding liabilities to CMEC in connection with the Project. 3. The responsive documents may reveal, for example: a. how CMEC's claim is characterised by the State (as a claim solely against Alutrint, or effectively or concurrently a claim against Trinidad and Tobago – a point the Respondent now puts into issue); b. whether any portion of CMEC's claim was uncontested or acknowledged; c. whether CMEC's claim was considered seriously and in good faith, including whether settlement or negotiation strategies were proposed, evaluated, or rejected; d. whether the State's position evolved over time or was influenced by political shifts. 4. These documents are necessary to enable a holistic assessment of the State's conduct (or inaction) in relation to CMEC's claim. They will help determine whether the State acted consistently, transparently, and in good faith, or whether its engagement was fragmented, politicised, or strategically evasive.
C. Responses and/or objections to document request	The objections to Requests 25, 34-36 (inclusive) refer. The comments regarding “catch-all” requests in the objections to Requests 11 and 22 also refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution.

	2. CMEC's replies in Requests Nos. 25 and 34 apply <i>mutatis mutandis</i>. 3. This request is clear, effective, and measured. It has to be given a reasonable scope for it to capture the relevant and material documents that are necessary for the fair determination of this dispute.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	38
A. Documents or category of documents requested	The report submitted in or around September 2014 by the working team established in the 2010-2015 UNC administration for Minister-level action.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in the Hansard report of 13 October 2015 [C-0406, p. 120]: <i>"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.</i> [...] <i>The working team reviewed the documents submitted by CMEC and submitted a report to the Minister around September 2014.</i> <i>A report exists since September 2014, the population does not know about that."</i> 2. CMEC has highlighted the existence and significance of this September 2014 report in Memorial, ¶¶ 404, 413, to which the Counter-Memorial offered no response. 3. This report is directly relevant and material in that it may contain a contemporaneous quantified assessment of CMEC's claim, and/or contemporaneous acknowledgement or recommendations regarding the validity, settlement, or further handling of CMEC's claims. 4. Similar to the observations made in relation to the Hatch report (see Request No. 5 above) – as will be revealed by the content of this report when produced – <i>either</i> the State accepted liabilities to CMEC (at least in part) but decided to wait out and not compensate, <i>or</i> that it recognised the need for further action (e.g. requesting more documents from CMEC) but chose to sit on it, thereby denying CMEC any opportunity to respond, as part of a broader systemic strategy of inaction.
C. Responses and/or objections to document request	Not agreed. This request is speculative - CMEC explicitly acknowledges that the report only “may” be relevant, if it transpires to contain certain matters which may or may not be addressed therein. T&T submits that this is insufficient to satisfy the requirements of relevance and materiality. In fact, T&T gave “no response” to ¶¶

	404 and 413 because they contain no allegations or even relevant fact which required any response. However, in any event, the content which would make the report relevant and material, on CMEC's own statement, is content reflecting T&T's internal assessment of CMEC's claims. The objections to Requests 34-36 (and the preceding objections in relation to T&T's privileged contemplation of CMEC's claims) refer. These objections are repeated herein.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. This is a material document on any view, summarising the UNC working team's comprehensive review of CMEC's claim after over a year's work. 3. There is no blanket privilege over "<i>content reflecting T&T's internal assessment of CMEC's claims</i>" – CMEC repeats its replies in Request No. 34 as well as its Overall Replies regarding the scope and limitations of each form of privilege. 4. The State has failed to specify – let alone, substantiate – the privilege it asserted to be applicable to this report. There is no suggestion from the contemporaneous reference (or from the State in its objection) that the report was prepared for the dominant purpose of obtaining advice or conducting negotiations. In fact, that it was submitted internally for Minister-level action suggested otherwise. 5. In any event, this report has been disclosed by the Prime Minister in public parliamentary proceedings [C-0406, p. 120] – loss of confidentiality leads to waiver of privilege. 6. The Tribunal should order the production of this report unredacted.
E. Decision of the Tribunal	The request is granted. The Respondent is to file a privilege log to the extent privilege is asserted.

Document Request No	39
A. Documents or category of documents requested	Except for the September 2014 report requested in Request No. 38 above, any other reports, briefs, presentations, notes, memoranda, analyses and similar documents prepared or developed or commissioned or received by the 2010-2015 UNC/People's Partnership administration in relation to CMEC's claim on the Project.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The reasons stated in Request No. 38, ¶¶ 3-4 apply <i>mutatis mutandis</i>. 2. Documents responsive to this request will provide additional contemporaneous materials that reflected the State's assessment of and conduct toward CMEC's claim. They may explain, for example, why there was no apparent follow-up or implementation of the September 2014 report, including whether the report was shelved, deprioritised, or overtaken by an instruction of non-payment or other policy decision.
C. Responses and/or objections to document request	The objection to Request 38 refers, as do the comments regarding “catch-all” requests in the objections to Requests 11 and 22. These requests concern privileged documents and are self-evidently too broad.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 38 apply <i>mutatis mutandis</i>. There is no blanket privilege. 3. This request is clear, effective, and measured. It has to be given a reasonable scope for it to capture the relevant and material documents that are necessary for the fair determination of this dispute.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad.

Document Request No	40
A. Documents or category of documents requested	Documents based on which the then Prime Minister Dr Keith Rowley arrived at the quantitative assessment of CMEC's claim in the order of US \$100 million (as of October 2017) – Dr Rowley stated in the parliamentary proceedings on 20 October 2017 that " <i>we have liabilities there in the approximation of about US \$100 million</i> " [C-0445, p. 14].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in the Hansard report of 20 October 2017 [C-0445, p. 14]: <i>"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.</i> [...] <i>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 down-streaming. 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."</i> 2. CMEC has highlighted the existence and significance of this contemporaneous quantitative assessment in Memorial, ¶ 431, to which the Counter-Memorial offered no response. 3. It is reasonable to assume that underlying documents must exist (and underlying analysis must have been completed) which enabled the PNM administration to arrive at this figure – particularly given the substantial amount involved and the fact that it was publicly stated by the Prime Minister in Parliament. 4. These documents will shed light on the details of the State's contemporaneous assessment of its financial exposure to CMEC arising from the Project's termination, including whether any portion of CMEC's claim was acknowledged, accepted or internally recognised, and whether any follow-up action (such as engagement, negotiation, or budgetary planning) was recommended. 5. Beyond their evidentiary value on the quantum of damages, these documents are also material to issues of liability in the present arbitration – in this regard, CMEC repeats the observations made in Request No. 38, ¶ 4, concerning the

	State's pattern of strategic inaction despite internal recognition of liability.
C. Responses and/or objections to document request	The objections to Requests 1, 5, 16, and 34-39 refer. CMEC continuously seeks documents that relate specifically to T&T's review of CMEC's claim, and its consideration of the prospects of settlement. It is manifestly improper to request a counterparty's internal discussions or evaluations of the claim brought against it. It is absurd to fish for supporting documents of a political statement, which by its nature has no or low probative value: see Counter-Memorial, Section F3. In any event, the request is speculative and far too broad. The Respondent anticipates that it would be extremely difficult at this late stage to pinpoint the precise document or documents that the Minister relied upon in making the statement that he did, some 8 years ago. It would not simply be a case of searching for a defined document, but embarking upon a much more onerous task of <i>identifying</i> the precise documents relied upon by the Minister at the time. The Respondent would have to contact and likely interview his aides at the time, junior ministers and other persons seeking to identify the sources. The reliability of the outcome of this speculative and time-consuming task would be doubtful; the task overall would be disproportionate to any likely gain in terms of CMEC's claim. To put it another way, it is impossible that the request will have any material impact on the outcome of the claim.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. The Respondent's objections, cursorily drafted, appear to rest on three grounds: privilege, relevance and materiality, and burden. CMEC addresses them in turn below. <i>Privilege</i> 3. There is no blanket privilege over "<i>documents that relate specifically to T&T's review of CMEC's claim, and its consideration of the prospects of settlement</i>" – CMEC repeats its replies in Request No. 34 as well as its Overall Replies regarding the scope and limitations of each form of privilege. 4. The Respondent has failed to establish any form of applicable privilege in respect of the requested documents. 5. In any event, privilege, if it ever existed, is lost by the Prime Minister's public reference and disclosure of the liability assessment [C-0445, p. 14]. All related documents supporting

	or underlying this liability assessment also fall to be produced. <i>Relevance and Materiality</i> 6. This request seeks documents that underlie a <u>specific</u>, <u>contemporaneous</u>, and <u>quantified</u> public statement made by the Prime Minister in Parliament. 7. It was not a vague political remark – it was rather a concrete quantitative assessment of financial exposure made in an official setting. It is reasonable to expect that such a statement was based on briefings, memoranda, or other assessments prepared by relevant ministries or officials. <i>Burden</i> 8. The Respondent's allegation that this request would impose an unreasonable burden is contrived (if not exaggerated) and unconvincing. The request is narrowly framed: it seeks documents that formed the basis of a <u>specific statement</u> made on a <u>specific date</u> by a <u>specific individual</u>. 9. In particular, the suggestion that the Respondent "<i>would have to contact and likely interview</i>" Dr Rowley's aides and junior ministers is a red herring. The responsive documents would be expected to be readily identifiable through a targeted search of official records and other archived documents from the relevant period.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.

Document Request No	41
A. Documents or category of documents requested	Except for the documents requested in Request No. 40 above, any other reports, briefs, presentations, notes, memoranda, analyses and similar documents prepared or developed or commissioned or received by the 2015-2025 PNM administration in relation to CMEC's claim on the Project.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The reasons stated in Request No. 38, ¶¶ 3-4 apply <i>mutatis mutandis</i>. 2. Documents responsive to this request will provide additional contemporaneous materials that reflected the State's assessment of and conduct toward CMEC's claim. They may explain, for example, why there was no apparent follow-up or implementation of the October 2017 quantitative assessment of CMEC's claim, including whether the assessment was shelved, deprioritised, or overtaken by an instruction of non-payment or other policy decision.
C. Responses and/or objections to document request	The objections to Requests 39 and 40 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 39 and 40 apply <i>mutatis mutandis</i>.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.

Document Request No	42
A. Documents or category of documents requested	Alutrint's register of shareholders/members (from incorporation to date) and issued share certificates.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The Respondent alleges in Counter-Memorial, ¶ 75 that "<i>Alutrint has throughout been owned as to 60% by T&T and as to 40% by Sural</i>". 2. Far from acknowledging this as the Respondent baselessly asserts, CMEC has presented factual evidence indicating otherwise: a. NEC as sole incorporator incorporated Alutrint on 8 April 2005 [C-0007; C-0008] b. Sural Barbados was only incorporated on 8 September 2006 [C-0014, ¶ 48] c. GORTT and Sural Barbados entered into a Unanimous Shareholders' Agreement on 3 July 2007, which provided for their respective 60:40 shareholding in Alutrint [C-0010, Recital (E)] d. Sural Barbados disengaged from the Project and discontinued performing the Unanimous Shareholders' Agreement by December 2007 [C-0014, ¶ 269] e. In fact, it appears that Alutrint has never issued any shares to either GORTT or Sural Barbados [C-0368, ¶¶ 85, 88] 3. CMEC therefore requests the production of Alutrint's register of shareholders and any share certificates, to verify and confirm the shareholder(s) of Alutrint and their respective shareholding ratios.
C. Responses and/or objections to document request	Not agreed. The Respondent relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint's documents are not the Respondent's documents. There are real and genuine concerns, legal and practical, about these requests. CMEC's request misrepresents its pleaded position regarding the ownership of Alutrint. CMEC has never previously alleged that the 60/40 ownership split of Alutrint is in question. This ownership status is acknowledged in ¶19 of CMEC's Request for Arbitration, and again in ¶¶33.2 and 36.5 of the Memorial. Notably, CMEC has exhibited the Award in the Sural Proceedings, in which the 60/40 division of Alutrint's ownership as between T&T and Sural was not disputed.

	Thus, the shareholding of Alutrint is not, and has never been, an issue in the proceedings. CMEC has raised this issue for the first time in its request for document production, and in doing so, has disingenuously reinterpreted the purpose of its factual exhibits. Once again, conspicuous by its absence is a reference to any pleading, witness statement or expert report in which CMEC queried the ownership structure of Alutrint. Rather, it refers to a paragraph of the Counter-Memorial, seeking to pretend that it was T&T's Counter-Memorial which first raised this ownership structure of Alutrint. That is wilfully misleading – as noted above, CMEC has referred to that ownership structure as a settled fact throughout the proceedings. As with many other requests, CMEC is, at best, engaged in a fishing expedition, and otherwise is simply looking to increase T&T's workload. There is nothing to indicate that this request relates to a matter genuinely in dispute, or that the requested documents would be material to the outcome of proceedings. T&T therefore objects to being put to the task of searching for such documents. The request is likely to distract the Tribunal from the task at hand, and do no more than give rise to further dispute on issues that are not relevant. It will, in other words, serve to frustrate procedural economy and the smooth operation of the tribunal proceedings.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. As to the State's possession, custody or control of Alutrint documents, CMEC repeats its Overall Replies, ¶¶ 38-40. 3. As to relevance and materiality: a. The State's contention that Alutrint has "<i>throughout been owned as to 60% by T&T and as to 40% by Sural</i>" (emphasis added) is flatly contradicted by evidence, including (undisputed) evidence that NEC alone incorporated Alutrint in April 2005 and Sural Barbados was only incorporated in September 2006. b. GORTT and Sural Barbados did enter into a Unanimous Shareholders Agreement in July 2007 recording an agreement between themselves as to the 60:40 shareholding split in Alutrint. However, that agreement was short-lived and it is never clear from evidence <u>whether and when this 60:40 structure has been implemented</u> in reality.

	c. C-0368, ¶¶ 85, 88 suggest it may never have been implemented – indeed, according to Mr Colleen Murray, Alutrint may have never issued any shares to either GORTT or Sural Barbados. d. In the context of the present dispute, the Parties dispute whether Alutrint's conduct is attributable to the State. One relevant factor in such consideration is structure – and it is certainly relevant and material to understand (through the requested documents) Alutrint's actual shareholding structure. 4. In fact, it would seem from the Respondent's (overly) defensive position in its response that Alutrint's ownership structure is likely <i>not</i> as it claims (and which the requested documents will substantiate). The Respondent should not be permitted to rely on a self-serving assertion of "<i>settled fact</i>" to shield a <i>non-fact</i>.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the document responsive to this request.

Document Request No	43
A. Documents or category of documents requested	Alutrint's constitutional documents (other than the Articles of Incorporation [C-0008]); if none exists, the reason therefor. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC adds the following clarification: Alutrint's constitutional documents (other than the Articles of Incorporation <u>dated 5 April 2005</u> [C-0008]); ~~if none exists, the reason therefor.~~ <u>By way of clarification, CMEC understands that Alutrint's constitutional documents comprise the Articles of Incorporation and the By-Laws (as referred to in C-0010, p. 4). "Other" constitutional documents are therefore intended to refer to Alutrint's By-Laws.</u> <u>For the avoidance of doubt:</u> (a) <u>if there have been multiple iterations of Alutrint's Articles of Incorporation and/or By-Laws, all <i>adopted</i> versions (past and present) should be produced; and</u> (b) <u>if in reality any such constitutional document is named differently, the Respondent should seek to comply with the substance of this request and produce the responsive documents however named.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The following was recorded in Alutrint's Board Minutes of 13 March 2012 [C-0315, p. 3]: <i>"Ms. Murray added that with respect to the letter from SURAL about the Bye-Laws of the Company, she responded that there were no approved Bye-Laws."</i> 2. It is unusual for a company not to have bye-laws, or other constitutional documents. 3. If no bye-laws or equivalent constitutional documents exist, the reason for their absence should be clarified. This would mean that there has been no formal framework of Alutrint's governance after Sural disengaged from the Project and the Unanimous Shareholders' Agreement was brought to an end by acceptance of Sural's repudiatory breach.

	4. The requested documents – or confirmation of their absence – is relevant to CMEC's argument that Alutrint functioned as an instrumentality of the State, with limited or non-functioning corporate governance, and that its conduct is attributable to the Respondent.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Otherwise, the Respondent does not understand what "constitutional documents" CMEC had in mind, if not the Articles of Association. It is for CMEC to identify the documents that it says exists and to explain why it is relevant. CMEC has failed to do this, such that the Respondent can do no more than decline.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. <u>As to the alleged lack of possession, custody or control of Alutrint documents</u>, CMEC repeats its Overall Replies, ¶¶ 38-40. 3. <u>As to the alleged non-identification of the requested documents</u>, it is clear from Section B, ¶¶ 1-3 that CMEC is seeking Alutrint's By-Laws (or any equivalent constitutional document). To put this beyond doubt, CMEC has added express clarification in Section A. 4. For the Respondent's and the Tribunal's further information: a. Based on the Unanimous Shareholders' Agreement dated 3 July 2007 [C-0010, p. 4], Alutrint was expected to have both the Articles of Incorporation and the By-Laws – the Articles were annexed as Exhibit A to the agreement (which CMEC has submitted as C-0008), while the By-Laws appeared not to have been adopted at that time. b. The Unanimous Shareholders' Agreement itself was short-lived, as Sural had disengaged from the Project and discontinued performing the Unanimous Shareholders' Agreement by December 2007 [C-0014, ¶ 269]. c. Based on Alutrint's Board Minutes of 13 March 2012 [C-0315, p. 3], the By-Laws had still not been adopted as of that date (see Section B, ¶ 1).

	d. The status of the By-Laws since March 2012 remains unclear, and this request seeks the production of documents that will clarify that status. 5. <u>As to the alleged non-explanation of relevance</u>, it is clearly explained in Section B, ¶ 4 that the requested constitutional documents – or their absence – are relevant and material to assessing whether or the extent to which Alutrint has a corporate governance framework in place. This, in turn, is relevant and material to determining whether Alutrint is a mere State instrumentality whose conduct is attributable to the State.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	44
A. Documents or category of documents requested	Alutrint's register of directors and officers (from incorporation to date).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. After a wide range of sources (including the 2014 witness statements of Ms Colleen Murray [C-0368] and Mr Leroy Mayers [C-0369]), CMEC has produced a detailed list of Alutrint directors and management in Memorial, Annex 3. 2. The Respondent did not challenge the accuracy of Annex 3; indeed, it too cites CMEC's Annex 3 for information regarding Alutrint's board composition [Counter-Memorial, ¶ 161]. 3. For good evidentiary order, CMEC invites the Respondent to produce Alutrint's register of directors and officers (or equivalent corporate records) – which apparently exist, as they were relied upon by Ms Colleen Murray and Mr Leroy Mayers in describing the evolution of Alutrint's board membership in their 2014 statements.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. In substance, this request is self-defeating. CMEC itself states that it has set out a “detailed” list of directors and management, the accuracy of which T&T does not dispute. It is therefore not a live issue in proceedings. CMEC requests the documents “for good evidentiary order” - that is to say that CMEC does not even seek to assert, much less substantiate, that such a documents is material to the outcome of proceedings. Evidently it is not, and merely forms part of CMEC's generally excessive approach to document production requests. The Respondent repeats its concerns, summarised in its response to Request 42, about the possibility of unnecessary and inefficient disputes on issues that are of no real relevance to the claim.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the alleged lack of possession, custody or control of Alutrint documents</u>, CMEC repeats its Overall Replies, ¶¶ 38-40. 3. <u>As to the alleged lack of relevance and materiality</u>, CMEC's diligence in preparing its case (including collating information from available sources such as two witness statements from the ICC Proceedings) is no reason to deprive

	it of access to primary evidence. In this context, the register of directors and officers is the authoritative corporate record that would enable CMEC to verify the accuracy and completeness of the information it has compiled to date. 4. The composition and evolution of Alutrint's board and management are clearly relevant and material to determining whether those individuals tasked with running the company were politically affiliated or otherwise answered/answerable to GORTT's direction. It also sheds light on whether the company or its corporate architecture was functioning at all at the relevant times. The Parties, as well as the Tribunal, should be provided with reliable corporate records in this regard. 5. <u>As to the alleged "<i>excessive approach</i>"</u>, this request concerns a <u>single</u> document – a register that will provide a complete record of Alutrint directors and officers from incorporation to date. Its probative value plainly outweighs any minimal burden of production. 6. CMEC submits that it is, to borrow the Respondent's own words, "<i>unnecessary and inefficient</i>" to debate the production of a document that is plainly relevant and informative. The register should be produced: a. if its contents are consistent with the information CMEC has gathered from secondary sources and summarised in Annex 3, the register will serve as confirmation, and CMEC is unlikely to raise issue; and b. if, on the other hand, it contains contradictions or reveals further information, it is not for the Respondent to act as its own referee and pre-judge whether any such differences are of "<i>no real relevance</i>".
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the documents responsive to this request.

Document Request No	45
A. Documents or category of documents requested	Alutrint's latest audited financial statements.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The State suggested in the ICC Proceedings that, following the termination of the Project, "<i>Alutrint remains in existence as a non-operational company to wind up these various agreements and deal with the implications of those contracts</i>" [C-0388, ¶ 108(5)]. 2. CMEC will request the production of documents reflecting the settlement status of other Project-related contracts in Request No. 101 below – to ascertain whether there has been any discriminatory or differentiated treatment. 3. Here, the point is that if Alutrint has settled various other Project-related contracts as the State contended – while failing or refusing to pay any part of CMEC's outstanding claim – it is likely that Alutrint now holds no or no meaningful cash or other assets. 4. If CMEC is denied access to justice in the present arbitration, its claim may be effectively permanently foreclosed – with the State having benefited from the investment of an international engineering contractor, deferred payment for over a decade, and ultimately walked away without any liability to compensate. 5. Alutrint's latest audited financial statements will provide insight into: a. the company's financial position, including available assets and liabilities; b. whether any payments were made to other contracting parties, with CMEC's claim being treated differently; and c. whether any provisions or disclosures were made in respect of CMEC's claim. 6. It appears that Alutrint's latest audited financial statements are for the year ended 31 December 2020 – this set of financial statements was briefly published on the MOF's official website on 11 March 2025 but later taken down [C-0638]. The document should therefore be readily available and in the possession of the State.

C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, CMEC's assertions as to the relevance and materiality of the financial statements are muddled and incomprehensible. Insofar as T&T can understand, CMEC essentially states that the financial records are relevant because Alutrint may lack the funds to pay CMEC. That is not relevant to these proceedings. CMEC's claim in this action is against T&T, not Alutrint. Alutrint's present financial resources are of no relevance at all to this arbitration. This request is no more than a fishing expedition and T&T does not agree to request this document from Alutrint.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the alleged lack of possession, custody or control of Alutrint documents</u>, as already pointed out in Section B, ¶ 6 and evidenced by C-0638, this particular document is plainly in the direct possession of the State. This fact alone is sufficient to refute any objection on this ground. CMEC also repeats its Overall Replies, ¶¶ 38-40. 3. The Respondent's mechanical assertion that it "does not agree to request this document from Alutrint", despite being in ready possession of the very document – and having been expressly reminded of that fact – is a clear demonstration of the (unnecessarily and unreasonably) uncooperative manner in which it has approached document production. 4. <u>As to the alleged lack of relevance and materiality</u>, CMEC reiterates Section B, ¶¶ 1-5 (in particular ¶ 5 on the relevant information the latest audited financial statements are likely to contain). CMEC further adds the following in light of the Respondent's response. 5. <i>First</i>, the Respondent argues that Alutrint's present financial resources are irrelevant because this arbitration is against Trinidad and Tobago. CMEC would note that Alutrint's financial condition (as a non-operational company) is directly and solely controlled by the State – because, using the State's own statement in the ICC Proceedings, "<i>GORTT alone was financing Alutrint</i>" [C-0381, p. 43]. Therefore, if the State simultaneously contends that CMEC should have pursued its claim against Alutrint, while depriving Alutrint of meaningful financial resources, it is a matter to be taken into

	account in the continued assessment of the reasonableness (or not) of the State's conduct toward CMEC's claim. 6. <i>Second</i>, the Respondent has sidestepped other dimensions of relevance and materiality as explained in Section B. a. A comparison between Alutrint's latest cash position (as shown in the requested latest financial statements) and its cash position as at 2012 [C-0374, p. 5] (as well as the relevant notes to the financial statements) will indicate whether substantial payments have been made to Alutrint's other contracting parties post the termination of the Project – leaving CMEC alone wholly uncompensated. This is relevant to the question of potential discriminatory or differentiated treatment. b. As with earlier financial statements (e.g. C-0373, p. 28; C-0374, p. 25), the latest audited financial statements may contain disclosures or provisions relating to CMEC's claim. Such disclosures would be probative of how Alutrint has treated and accounted for the dispute – e.g. whether as a contingent liability, a recognised liability, or a matter written off due to arrangements with the State.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	46
A. Documents or category of documents requested	A list of all Alutrint board and shareholders' meetings held to date. The list should include the following information: (i) date of meeting; (ii) type of meeting (board or shareholders); (iii) whether resolutions were passed; and (iv) if so, a high-level summary of the resolutions passed. <u>Note</u>: This request is limited to a high-level list of meetings held to date. CMEC has included in Requests Nos. 48 to 61 below requests for certain specific Board Minutes and Papers, but reserves the right to request further minutes and/or papers after reviewing the list provided. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC is prepared to accept <u>either</u> of the following for this request: Option 1: A list as described above, covering the period from July 2012 to present, without limb (iv); <u>or</u> Option 2: A copy of all Alutrint board and shareholders' minutes from July 2012 to present. The rationale is explained in Section D below.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The Respondent argues in the Counter-Memorial that Alutrint "<i>operates in the same way as companies in the private sector</i>" (§ 80), and "<u>was</u> <i>operated on normal commercial lines</i>" "<i>with each of its shareholders (T&T and Sural) playing a significant part, both financial and otherwise, in its operations</i>" (§ 90, emphasis added). 2. This is part of the broader debate on attribution, i.e. whether Alutrint's conduct (including acts and omissions) is attributable to the State: Memorial, § I v. Counter-Memorial, § H. 3. One line of CMEC's argument is that, although Alutrint was established as a separate corporate entity, it has been subject to the instruction, direction, and control of the State,

	including with respect to specific decisions concerning the Project and CMEC's claim: Memorial, § I.3 (¶¶ 541-544). 4. Related to this line of argument is evidence that Alutrint's board has long been largely, if not entirely, non-performing: Memorial, ¶¶ 36.7-36.8. a. After Sural disengaged at the end of 2007, <i>"the frequency of Board Meetings decreased from 2008 onwards"</i>; <i>"[f]rom 2008 there was a marked decrease in the call for Board Meetings"</i>. [C-0368, ¶ 50] b. After the UNC came into power in May 2010, <i>"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"</i>. [C-0327, p. 2] 5. This request essentially seeks a high-level index of Alutrint's corporate governance activity (including its frequency and effectiveness) which will help establish: a. whether Alutrint's board has been actively engaged in decision-making, or whether key decisions were made externally and merely formalised (or not formalised at all); and b. whether CMEC's contracts, the Project's termination, CMEC's post-termination claim, and other related financial matters were ever substantively addressed at the board or shareholder level. 6. Evidence of board inactivity or limited engagement will further support CMEC's position that Alutrint was, and has been, acting as an instrument of the State, rather than as an independent corporate actor. 7. The requested information is therefore relevant and material to the Tribunal's assessment of attribution – whether the State exercised effective control over Alutrint's conduct in relation to the Project and CMEC's claim.
C. Responses and/or objections to document request	Not agreed. This request is not for a document which presently exists. Rather, it is a request for T&T to produce information for CMEC. That is

	outside the scope of document production requests, as set out in ¶¶ 31-33 of T&T's Preliminary Remarks. Further, insofar as necessary, T&T's comments in its response to Request 42, with respect to Alutrint documents, refer.																														
D. Replies to objections and request for resolution	1. CMEC offers two alternative options, as described in Section A above. CMEC is prepared to accept either at the Respondent's selection. 2. This now requests the State to produce a <i>very</i> simple list (which CMEC thinks is a convenient option for both Parties) or alternatively the copies of the minutes for CMEC itself to come up with such a list (which CMEC is happy to do as well). 3. CMEC sets out the below matters for further background. 4. CMEC has now taken the additional step of attempting to extrapolate the number of Alutrint board meetings held each year based on the currently available evidence. The table below sets out CMEC's best understanding: <table><tr><th>Year</th><th>No. of Board Meetings</th><th>Basis</th></tr><tr><td>2005</td><td>3</td><td>C-0369, ¶ 34 C-0643, p. 27 (# 5.(b))</td></tr><tr><td>2006</td><td>6</td><td>C-0368, ¶ 24</td></tr><tr><td>2007</td><td>6</td><td>C-0368, ¶ 45</td></tr><tr><td colspan="3">C-0368, ¶ 50: <i>"It is noticeable that the frequency of Board Meetings decreased from 2008 onwards. [...] From 2008 there was a marked decrease in the call for Board Meetings."</i></td></tr><tr><td>2008</td><td>2</td><td>C-0368, ¶ 51</td></tr><tr><td>2009</td><td>2</td><td>C-0368, ¶ 53</td></tr><tr><td>2010</td><td>2</td><td>C-0368, ¶¶ 56-57 C-0327, p. 2</td></tr><tr><td>2011</td><td>0</td><td>C-0327, p. 2 C-0368, ¶¶ 70-71</td></tr><tr><td>2012</td><td>2 (+ 1 "Extra Ordinary Meeting")</td><td>C-0368, ¶ 88 C-0335, p. 1</td></tr></table> 5. <u>CMEC is not able to ascertain data for board meetings for July 2012 onwards</u>, as the witness statement of Ms Colleen Murray [C-0368] (Alutrint's Company Secretary) only described board meetings up to June 2012 (for context, the ICC Proceedings between Sural and GORTT commenced in July 2012 [C-0014, ¶ 10]). 6. <u>As for Alutrint's shareholders' meetings, CMEC has found no reference in the available materials to any such meetings</u>	Year	No. of Board Meetings	Basis	2005	3	C-0369, ¶ 34 C-0643, p. 27 (# 5.(b))	2006	6	C-0368, ¶ 24	2007	6	C-0368, ¶ 45	C-0368, ¶ 50: <i>"It is noticeable that the frequency of Board Meetings decreased from 2008 onwards. [...] From 2008 there was a marked decrease in the call for Board Meetings."</i>			2008	2	C-0368, ¶ 51	2009	2	C-0368, ¶ 53	2010	2	C-0368, ¶¶ 56-57 C-0327, p. 2	2011	0	C-0327, p. 2 C-0368, ¶¶ 70-71	2012	2 (+ 1 "Extra Ordinary Meeting")	C-0368, ¶ 88 C-0335, p. 1
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2012	2 (+ 1 "Extra Ordinary Meeting")	C-0368, ¶ 88 C-0335, p. 1																													

	<u>being held</u>. This suggests that none (or very few) were ever convened. 7. This request is therefore believed to impose minimal burden on the Respondent: Alutrint board meetings are likely somewhere between 0-2 each year, and shareholders' meetings are likely 0 for most years. 8. As to relevance and materiality, CMEC reiterates the analysis set out in Section B above.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the documents responsive to this request. At the Respondent's option it may prepare the list proposed in Option 1 in place of producing the documents responsive to the request.

Document Request No	47
A. Documents or category of documents requested	A list of all Alutrint board and shareholders' written resolutions to date. The list should include the following information: (i) date of written resolution; (ii) type of written resolution (board or shareholders); (iii) a high-level summary of the written resolution. <u>Note</u>: CMEC reserves the right to request specific written resolutions after reviewing the list provided. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC is prepared to accept <u>either</u> of the following for this request: Option 1: A list as described above, covering the period from July 2012 to present, without limb (iii); <u>or</u> Option 2: A copy of all Alutrint board and shareholders' written resolutions from July 2012 to present. The rationale is explained in Section D below.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 46, ¶¶ 1-7. 2. This request is complementary to Request No. 46, in case any resolutions of Alutrint were adopted by means of written resolutions rather than through convened meetings.
C. Responses and/or objections to document request	The objection to Request 46, and ¶¶ 31-33 of T&T's Preliminary Remarks, refer.
D. Replies to objections and request for resolution	1. CMEC offers two alternative options, as described in Section A above. CMEC is prepared to accept either at the Respondent's selection. 2. CMEC's replies in Request No. 46 apply <i>mutatis mutandis</i>.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the documents responsive to this request. At the Respondent's option it may prepare

	the list proposed in Option 1 in place of producing the documents responsive to the request.
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Document Request No	48
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 001 of 22 April 2005. <u>CMEC 12/09/2025</u> : The requested document is E1/10 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Alutrint held its first board meeting on 22 April 2005 [C-0014, ¶ 69]. 2. The Minutes recorded the Cabinet's approval of the Project on 21 April 2005, and stated that Alutrint "<i>would be assigned with overall responsibility for the Aluminium Transformation Complex – both upstream (smelter) and downstream (with the exception of the Technology Development Centre)</i>" [C-0014, ¶ 69]. 3. A full copy of the Minutes will likely provide more context regarding the origins of the Project and Alutrint. It is also more reliable and probative than secondary summaries or other derivative materials – in this regard, CMEC repeats its comment in Request No. 25, ¶ 7 (concerning the evidentiary value of original records over summaries).
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objections to Requests 34-36 refer, in relation to documents which go to a factual event that is not in dispute. There is plainly no need for these minutes to be adduced in the proceedings, as the factual events that they record are not in dispute. This request (and Requests 49-61 hereafter) are poorly disguised fishing expeditions from CMEC (or otherwise are simply make-work requests). As to basis (3) of CMEC's stated relevance above: that the Minutes "will likely provide more context" is vague. This shows that this is a fishing exercise and the document is not material to the outcome of the action.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the State's possession, custody or control of Alutrint's documents</u>, CMEC repeats its Over Replies, ¶¶ 38-40. Specifically, the State can directly retrieve this document from the ICC Bundle E.

	3. <u>As to relevance and materiality</u>, CMEC takes issue with the State's general approach to treat fact findings in the ICC Proceedings as "<i>not in dispute</i>" or settled or agreed <u>between the State and CMEC</u>. CMEC is not privy to the ICC Proceedings and therefore has had no means to verify or correct or supplement the factual record there. 4. Given the overlapping facts but different factual focuses in the two proceedings, it is likely that the secondary or derivative summaries in documents from ICC Proceedings (including the ICC Award) may not have captured all relevant and material information for the purposes of the present dispute. The emphasis and omissions may well be different if one looks at the same document for different purposes / from different perspectives. 5. CMEC therefore requests the production of the original records – which are more reliable and probative, and which may (well) contain additional relevant information.
E. Decision of the Tribunal	The request is granted.

Document Request No	49
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting 2006-01 of 3 February 2006. <u>CMEC 12/09/2025</u> : The requested document is E1/27 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. At this Board meeting on 3 February 2006, Alutrint approved payment of the first mobilisation fee in the amount of US \$6 million to CMEC [C-0014, ¶ 75]. 2. Given the need to justify the mobilisation payment, the Minutes likely would have recorded works and preparatory activities CMEC had carried out by that stage.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. The objections to Requests 34-37 also refer, in relation to documents which go to a factual event that is not in dispute. As to basis (2), there is no basis on which to assume that the minutes would record CMEC's activity. Board minutes are typically concise records of decisions taken by a company's board; they are not detailed notes of the meeting and there is no basis (implicit or explicit) for CMEC's assertion. These are historic documents belonging to, and in the control and possession of, a third party. CMEC seeks these documents to prove "activities CMEC had carried out." It is unduly burdensome for T&T to seek these documents from Alutrint, or for Alutrint to search for them – CMEC has made a claim based on the activities it had allegedly completed by 3 February 2006, and has ascribed a value to those activities. It is for CMEC to prove the extent of its own activities, and it is inappropriate to put T&T or third parties to work in fishing for further evidence. If CMEC has no proper record of the work it undertook, it should not have brought a claim for the same
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the State's possession, custody or control of Alutrint's documents</u>, CMEC repeats its Over Replies, ¶¶ 38-40. Specifically, the State can directly retrieve this document from the ICC Bundle E.

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	3. <u>As to relevance and materiality of the original records</u>, CMEC repeats its replies in Request No. 48, ¶¶ 3-5. 4. <u>As to the State's (mis-)representation on the content of Alutrint Board Minutes</u>, CMEC repeats its Overall Replies, ¶¶ 9-10.
E. Decision of the Tribunal	The request is granted.

Document Request No	50
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2006-05 of 11 October 2006, together with Board Paper No. 2006-05-23 (concerning CMEC's request for US \$20 million mobilisation fee). <u>CMEC 12/09/2025</u>: The requested documents are respectively E1/40 and E1/31 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. On 3 October 2006, CMEC requested an additional mobilisation payment of US \$20 million, citing delays in receiving the CEC, the benefit of commencing construction before the 2007 rainy season, and the need to mitigate price escalation [C-0108]. 2. Board Paper No. 2006-05-23 was prepared to identify the benefits and potential risks of approving an equity call on the shareholders in the amount of the US \$20 million requested. Although it identified "<i>the non-approval of the project from a financing or environmental perspective</i>" as the main risks, the Board Paper recommended that Alutrint "<i>source and mobilize USD20m in October 2006, in anticipation of a successful award of the CEC in mid-October 2006</i>" [C-0014, ¶ 78]. 3. At Board Meeting No. 2006-05 on 11 October 2006, the Board agreed that "<i>once a CEC is approved, the Board will support the recommendations of the Board Paper</i>" [C-0014, ¶ 79]. 4. The Respondent now relies on the benefit-risk analysis from this Board Paper – which anticipated successful CEC approval – to support its depiction of the "<i>health and environmental issues</i>" surrounding the Project. It argues that "<i>Alutrint itself recognised at an early stage that the main risks affecting the Project were its non-approval from a financing or environmental perspective</i>" [Counter-Memorial, § D.2.1, ¶ 52]. 5. The production of the requested Board Paper and Board Minutes will contribute to demonstrating Alutrint's actual assessment of the Project's viability and prospects at the time.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. The objections to Requests 48 and 49 also refer. These minutes will merely record a decision that the parties know to have been taken. Nothing in CMEC's section B above shows any genuine

	indication that the documents would be material to the outcome of the proceedings.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48 and 49.
E. Decision of the Tribunal	The request is granted.

Document Request No	51
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2007-02 of 26 April 2007. <u>CMEC 12/09/2025</u>: The requested document is E1/47 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. At this Board meeting on 26 April 2007, the Board members agreed that the US \$20 million mobilisation fee to CMEC would be paid in accordance with a GORTT 60 : Sural 40 ratio, following the signing of the Unanimous Shareholders' Agreement [C-0014, ¶ 83]. 2. The Unanimous Shareholders' Agreement being entered into on 3 July 2007, Alutrint proceeded to issue a US \$8 million equity call on Sural on 4 July 2007 [C-0014, ¶ 89]. 3. Sural failed to meet this equity call, leading to the MOF serving a notice of material breach on 10 December 2007 [C-0014, ¶ 94], followed shortly thereafter by Sural's disengagement from the Project at the end of 2007 [C-0014, ¶¶ 96-100]. 4. Core documents relating to Sural's disengagement are requested in Requests Nos. 80 to 83 below. 5. The 26 April 2007 Minutes are requested to provide the necessary context for the subsequent events relating to Sural's non-performance of the Unanimous Shareholders' Agreement and its disengagement from the Project.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Additionally, the objections to Requests 48-50 refer. "Providing context" is some way short of being material to the outcome of proceedings.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48 and 49.
E. Decision of the Tribunal	The request is granted.

Document Request No	52
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2007-04 of 27 September 2007, together with the Board Paper regarding CMEC's request for price increase. <u>CMEC 12/09/2025</u>: The requested Board Minutes are E1/68 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	- At this Board meeting on 27 September 2007 [C-0381, ¶ 150]: <i>"Mr Butler informed the Alutrint Board that CMEC was proposing an increase in the capex cost of the smelter component of the Project from USD 275 million to USD 356.76 million <u>on account of inflation, scope adjustments and design revisions</u> and hence an overall increase in Project cost to USD 621.76 million. <u>The Alutrint Board decided to approve the increase subject to acceptable results from a financial model update.</u>" (emphases added)</i> - Alutrint and CMEC began renegotiating the EPC contract price since around August 2007, due to multiple factors including design revisions: Memorial, ¶¶ 173-175. - Hence, Alutrint's Board Minutes during this period documented or reflected CMEC's requests for price increases and Alutrint's and other stakeholders' positions in relation thereto. - Relevant to the present dispute on quantum – particularly the quantum of CMEC's engineering claim, in respect of which the Respondent now disputes the "causation" of certain design changes [CH ER, ¶ 2.2.2.7] – Alutrint's contemporaneous acknowledgement of any justified or justifiable cost increases linked with design changes (as recorded in the Board Minutes and/or Papers) would provide probative evidence of the causation and valuation of the design revisions in question. - These documents therefore undermine the Respondent's attempt to retrospectively disassociate from cost consequences that were, at the time, acknowledged, accepted or approved by Alutrint's Board.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer.

	Additionally, the objections to Requests 48-50 refer. The decision reached at the meeting is known, and, as CMEC's request above shows, it was explicitly "subject to acceptable results from a financial model update." The exponential increase in costs throughout is also not disputed. See e.g. the Memorial, ¶175. The minutes and board paper add nothing for the purpose of the present proceedings, given that Alutrint's decision is already known and accepted by both parties. It is a blatant fishing exercise.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48 and 49. 3. CMEC also reiterates the reasons of relevance and materiality, as set out in Section B above, in relation to this specific Board Minute and Board Paper. 4. In particular, the Board Minutes and/or Board Paper may record Alutrint's contemporaneous acknowledgement of any justified or justifiable cost increases linked with design changes, and therefore provide probative evidence of the causation and valuation of the design revisions now in dispute.
E. Decision of the Tribunal	This request is granted.

Document Request No	53
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2007-05 of 23 November 2007, together with Board Paper 2007-05-43. <u>CMEC 12/09/2025</u>: The requested documents are respectively E1/75 and E1/78 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. In relation to Board Paper 2007-05-43 and the Board meeting on 23 November 2007 [C-0381, ¶ 151]: <i>"In November 2007, Mr Philip Julien prepared a board paper (2007-05-43), endorsed by Mr Mayers, providing an updated project economics, which included further substantial increases proposed by CMEC. In summary, CMEC was proposing capex increases of up to USD 270 million by reason of delays, adjustments and scope and design changes so that the total Project cost was USD 810 million. The drivers of the increase was [sic] increase in smelter costs of USD 82 million, increase in port costs of USD 82 million, increase in owner's costs of USD 87 million and downstream cost increases of USD 19 million.</i> [...] <i>At the Alutrint Board Meeting of 23 November 2007, the Board Paper was considered and the recommendation was for an in house team to review the increases with a view to: 'obtaining a realistic position having regard to the general cost operating Smelters world-wide, further and subsequent to the internal review discussions with CMEC ought to be held.'"</i> 2. CMEC repeats the reasons stated in Request No. 52, ¶¶ 2-5, with respect to the relevance and materiality of Alutrint Board Minutes and Papers reflecting contemporaneous acknowledgement or assessment of design related cost increases.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objection to Request 52 refers.

D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48, 49 and 52.
E. Decision of the Tribunal	The request is granted.

Document Request No	54
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2007-06 of 20 December 2007. <u>CMEC 12/09/2025</u>: The requested document is E1/86 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is stated in GORTT's written submissions in the ICC Proceedings that "[a]s a result [of the price increases discussed at the Alutrint Board Meeting on 23 November 2007], as recorded in the Alutrint Board Minutes of 20 December 2007, GORTT set up a committee to examine the proposed costs with a view to their 'downward revision'. The Committee comprised Professor Julien, Mr Frank Look Kin, Mr Andrew Jupiter, Ms Allison Lewis, and Mr Mayers." [C-0381, ¶ 155] 2. On the same day (i.e. 20 December 2007), Professor Kenneth Julien, Chairman of NGETF and Chair of this GORTT Committee, directly reached out to CMEC, emphasising that the review of the price increases "is being undertaken on behalf of the Government of the Republic of Trinidad and Tobago and not Alutrint Limited." [C-0146, p. 3]. 3. The Board Minutes of 20 December 2007 also recorded that the MOF had served a notice of material breach dated 10 December 2007 on Sural, for its failure to meet the US \$8 million equity call for CMEC's mobilisation payment [C-0368, ¶ 45]. 4. This set of minutes therefore reflects the State assuming a more direct and interventionist role in Alutrint's affairs against the backdrop of Sural's disengagement – demonstrating that Alutrint was increasingly operating under the direct instruction and control of the State.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objections to Requests 48-50 and 52 refer. It is an agreed fact that T&T set up the committee and that the MOF served notice of material breach on Sural. Documents recording that are of no probative value and are not material to the outcome of the dispute.

D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48, 49 and 52.
E. Decision of the Tribunal	The request is granted.

Document Request No	55
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2008-02 of 18 December 2008. <u>CMEC 12/09/2025</u>: The requested document is E2/133 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is stated in GORTT's written submissions in the ICC Proceedings that [C-0381, ¶ 198]: <i>"The 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. Instead the matter was simply reported to the Alutrint Board – and thereby to Sural – at its meeting of 18 December 2008. No objection was taken to this."</i> 2. That is, the 2008 EPC Contract with CMEC was directly approved by the Cabinet in October 2008 [C-0014, ¶ 117], and only reported to the Alutrint Board (without seeking approval or ratification) in December 2008. 3. This set of minutes therefore reflects the diminished role of Alutrint's Board in key decision-making, and the corresponding increase in direct State control over Alutrint – demonstrating that governance had shifted away from Alutrint's corporate structure and toward centraliaed State direction.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objections to Requests 48-50 and 52 refer. T&T does not dispute the relevant factual point. CMEC clearly does not need evidence for the same, and has evidently failed to disclose its true motives for making the request. The documents requested will have no relevant impact on the outcome in this case.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48, 49 and 52.
E. Decision of the Tribunal	The request is granted.

Document Request No	56
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2009-02 of 3 June 2009. <u>CMEC 12/09/2025</u> : The requested document is E2/146 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is stated in GORTT's written submissions in the ICC Proceedings that [C-0381, ¶ 170(4)]: <i>"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."</i> 2. Therefore, the Alutrint Board "<i>considered</i>" CMEC's request for a US \$16 million advance payment at its meeting on 3 June 2009. However, it remains unclear whether the Board substantively considered and approved the payment, or whether, by that time, all (major) decisions relating to CMEC had been effectively reserved to GORTT, rendering Board involvement largely procedural. 3. Further, despite GORTT having transmitted the full US \$16 million to Alutrint to meet CMEC's advance payment requirements, the funds were not remitted to CMEC – for reasons that were never explained to CMEC [Memorial, ¶ 167 and fns. 365–366]. 4. This set of minutes will reflect that – using GORTT's own words in the ICC Proceedings – "<i>GORTT alone was financing Alutrint</i>" [C-0381, § D.3.3]. It will also shed light on the above questions, including the extent of the State's control over Alutrint's financial dealings with CMEC and potentially the reasons why the funds were ultimately withheld from CMEC.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. The objections to Requests 48-50 and 52 further refer. These minutes clearly have no materiality to the outcome of the proceedings. CMEC requested a payment, which Alutrint made, financed by T&T. That is not disputed; documents which demonstrate that it took place with the agreement of T&T and Alutrint are otiose. There is no basis for the speculative assertion that money was "withheld" from CMEC. Insofar as this is a reference to settlement: a settlement figure was never reached

	These facts are not in dispute and the documents sought will not add anything.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Requests Nos. 48, 49 and 52. 3. To clarify, as a matter of fact, Alutrint did not made the requested US \$16 million advance payment to CMEC, despite having received the funds from GORTT.
E. Decision of the Tribunal	The request is granted.

Document Request No	57
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2010-01 of 11 May 2010. <u>CMEC 12/09/2025</u>: The requested document is E3/178 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. According to Ms Colleen Murray, the Minutes of the Alutrint Board meeting held on 11 May 2010 record that [C-0368, ¶ 56]: <i>"EMA had appealed the decision of Justice Mira Dean-Armour on 7 July 2009 and that Alutrint and the Attorney General had joined in as interested parties and that the appeal was heard during the period 22 September to 7 November 2009 with the judgment having been reserved."</i> <i>"CMEC had sent a letter to the Chairman dated 15 May 2010 on the subject of a mobilisation fee seeking urgent payment of USD\$ 5 million. It was noted that from 2007 CMEC had requested USD20 million as a mobilisation fee but only USD 12 million had been paid by GORTT. The Board approved the payment of USD5 million to CMEC. It was noted that there was still USD3 million owing from CMEC's 2007 request."</i> 2. Given the subject matters covered, this set of minutes may contain additional details regarding the post-hearing status of the Appeal Action (including potentially Alutrint's assessment of the prospects of a successful appeal), and may clarify the status of the mobilisation payments to CMEC (including its acknowledgement of the amount remaining due to CMEC for over two years).
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, this request is entirely speculative. CMEC does not properly explain why it thinks that the minutes "may contain" the details it seeks. For the reasons set out in the objection to Request 48, T&T rejects that speculation. In any event, the details CMEC hopes to find relate to Alutrint's consideration of (i) ongoing legal action in which it had an interest; and (ii) dealing with CMEC's claims for payment. As set out in ¶¶ 56-63 of T&T's Preliminary Remarks and numerous objections above, any such content is plainly privileged. It would not be

	appropriate for T&T to seek that material from Alutrint for onward disclosure.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the State's possession, custody or control of Alutrint's documents</u>, CMEC repeats its Over Replies, ¶¶ 38-40. Specifically, the State can directly retrieve this document from the ICC Bundle E. 3. <u>As to the State's (mis-)representation on the content of Alutrint Board Minutes</u>, CMEC repeats its Overall Replies, ¶¶ 9-10. CMEC otherwise repeats its replies in Request No. 48. 4. <u>As to the State's assertion of privilege</u>, Board Minute contents relating to the CEC appeal (which is a litigation that concluded more than a decade ago) and CMEC's request for the US \$5 million mobilisation payment (during the active operational phase of the Project) are "plainly" unprivileged. The State's assertion of privilege over these contents is surprising and in any event wholly unsubstantiated.
E. Decision of the Tribunal	The request is granted.

Document Request No	58
A. Documents or category of documents requested	Alutrint Board Paper No. 2012-01-76 (CMEC Demobilisation).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Board Paper is referred to in the Minutes of Alutrint Board Meeting No. 2012-01 of 13 March 2012 [C-0315, p. 6]: <i>"2012-01-76 CMEC Demobilization</i> <i>Members agreed to defer matter of CMEC Demobilization pending legal advice."</i> 2. This entry evidences that despite the Notice to Demobilise dated 23 January 2012 [C-0031] (which requested CMEC to complete demobilisation by 29 March 2012), Alutrint had not yet permitted CMEC to proceed with the demobilisation works by the time of this Board meeting on 13 March 2012 – in fact, the authorisation was not granted until as late as 30 July 2012 [C-0335]. 3. This Board Paper is expected to shed light on the circumstances surrounding the Project's termination and the ensuing demobilisation works, and the reasons for the deferral of action despite prior instructions to CMEC.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objection to Request 57 refers. These minutes will not be relevant, as the decision taken by Alutrint is known and undisputed. In any event, as CMEC identifies, the basis of the deferral related to the taking of legal advice. Litigation and/or legal advice privilege (belonging to Alutrint) will clearly attach to the information CMEC hopes to find, were it in fact contained in the minutes (which T&T doubts). ¶¶56-60 of T&T's Preliminary Remarks refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. As a preliminary point, in this instance CMEC is requesting the Board Paper, not the Board Minutes – the latter of which is already in evidence, i.e. C-0315, as referred to in Section B, ¶ 1. 3. The Respondent's objections in Section C above appear to be based on a misreading of the request. Therefore, its

	contention that Board Minutes merely recorded decisions with no further context – in addition to it being an untrue contention flatly contradicted by evidence – is entirely misplaced and misses the point. 4. As a Board Paper, the requested document is highly likely to contain detailed information regarding the matters described in Section B, ¶ 3 (i.e. factual circumstances surrounding the Project's termination and the conflicting instructions on demobilisation works). 5. As to the Respondent's (speculative) assertion of legal privilege against the Board Minutes, it is evident from C-0315 that the Minutes contain no privileged information and were disclosed without redaction. It is an example directly on point that illustrates why the Respondent's extensive and unsubstantiated claims of privilege – often asserted on the basis of the content being "plainly" or "clearly" privileged – should be approached with a high degree of scrutiny. 6. For the avoidance of doubt, CMEC notes that privilege does not apply to the Board Paper either. 7. It is implausible that this requested Board Paper is subject to legal advice privilege. The fact that the "<i>matter of CMEC Demobilization</i>" as set out in the requested Board Paper No. 2012-01-76 was tabled before the Board for decision but deferred "<i>pending legal advice</i>" suggests that this Board Paper was not created "<i>in connection with and for the purpose of</i>" obtaining legal advice and indeed no legal advice was yet sought. Instead, it is a regular document prepared for internal deliberation and decision-making. Whether it was subsequently included in the materials shared with a lawyer when seeking legal advice on CMEC's demobilisation is immaterial – pre-existing materials do not attract legal advice privilege (see Overall Replies, ¶¶ 67-68). 8. It is also unlikely that this requested Board Paper is protected by litigation privilege. This document was created in or around March 2012, at a time when adversarial legal proceedings were not in the reasonable contemplation of either party – as evidenced by the continued open correspondence and amicable discussions in this period. In any event, as addressed above, this Board Paper was clearly not created for the purpose – let alone the dominant purpose – of obtaining advice or information in connection with the conduct of litigation. 9. Lastly, for completeness, CMEC repeats its Overall Replies, ¶¶ 38-40 regarding the State's possession, custody or control
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	of Alutrint documents – the State certainly has the ability to request this Board Paper from Alutrint, if not already in possession of it.
E. Decision of the Tribunal	The request is granted.

Document Request No	59
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting No. 2012-02 of 5 June 2012. <u>CMEC 12/09/2025</u>: The requested document is GORTT Pages 1271-1277 (as cited in C-0368, ¶ 88) in the ICC Proceedings. This means that the State has submitted this document as a factual exhibit which formed part of Bundle E in the ICC Proceedings (although its exact hearing bundle reference is not readily ascertainable from the currently available documents).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This was the final Board meeting attended by Sural-appointed directors, prior to their exit from the Board on 28 June 2012 [C-0368, ¶ 90]. 2. One of the "<i>matters for approval</i>" on the agenda for this 5 June 2012 meeting was "<i>High Court Order Appeal dismissal on grounds of mootness or other instructions to counsel</i>" [C-0328, p. 1]. 3. The Minutes of this meeting are therefore expected to shed further light on the status of the Appeal Action, which appeared to be still ongoing more than a year after the EMA's motion to discontinue the appeal in May 2011 [C-0284]. These minutes may clarify Alutrint's legal posture in the appeal, and provide context for understanding the reference to "<i>mootness or other instructions to counsel</i>".
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Furthermore, the objection to Request 57 refers. Any internal Alutrint information relating to the appeal process is subject to privilege, and any decision of the Court of Appeal is public information which CMEC can find for itself. ¶¶45-49 of T&T's Preliminary Remarks refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the State's possession, custody or control of Alutrint's documents</u>, CMEC repeats its Over Replies, ¶¶ 38-40. Specifically, the State can directly retrieve this document from the ICC Bundle E. 3. <u>As to the State's assertion of privilege</u>, is it principally wrong for the State to contend that "[a]ny internal Alutrint information relating to the appeal process" is privileged. There is no such blanket privilege available. CMEC repeats

	its observation in Request No. 57 that the State's assertion of privilege over information relating to a long-concluded local litigation is surprising and wholly unsubstantiated. 4. As two additional points: a. CMEC has conducted Trinidad and Tobago court searches in an attempt to locate the Court of Appeal decision. But none is available in the public domain [C-0648]. b. In addition to discussion on the appeal, as the last Alutrint Board meeting before the exit of Sural directors, the requested Board Minutes are expected to contain other relevant and material information that sheds light on the party dynamics and company operational status at that time.
E. Decision of the Tribunal	The request is granted. . The Respondent is to file a privilege log to the extent privilege is asserted.

Document Request No	60
A. Documents or category of documents requested	Minutes of Alutrint's Extra Ordinary Meeting of 30 July 2012.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It was stated in Alutrint's letter to CMEC dated 3 August 2012 [C-0335]: <i>"I am to advise on July 30, 2012 the Board of Alutrint Limited convened an Extra Ordinary Meeting to urgently consider the subject of CMEC's demobilization. The Board approved and authorized the demobilization, which they considered was already in process as CMEC was already engaged in activities on Site maintaining and preparing their equipment since June, 2012 for shipment."</i> 2. The Minutes of this 30 July 2012 meeting may shed light on the reasons for the prior non-approval of the demobilization activities, despite Alutrint's Notice to Demobilize dated 23 January 2012. They may also explain the motivation for the "urgent" approval at that stage, and contain descriptions and acknowledgments of the disruptions and harm caused to CMEC by the delay and inconsistency in Alutrint's actions.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Additionally, the objections to Requests 48-50, 52 and 57 refer, with respect to relevance (it being common ground that the payment was made) and privilege (the decision having been a response to CMEC's claims, Alutrint's consideration of which is protected by privilege). Further, CMEC's claim in these proceedings is against <u>T&T</u>. It is inconceivable that documents which "may shed light on the reasons for" a delay in payment by Alutrint over a decade ago could be material to the outcome of CMEC's present claim. Once again, CMEC is fishing, and/or seeking to burden T&T with excessive requests.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 48-49 (cross-referred to in No. 50), 52 and 57 apply <i>mutatis mutandis</i>.

	3. In particular, the assertion of (unspecified) privilege is not substantiated and does not appear to be valid on any ground. 4. As to relevance and materiality, it is CMEC's case that Alutrint's conduct (including unreasonable delay of approval and payment for demobilisation activities) is attributable to the State, and all such unreasonable conduct should be considered collectively and holistically. CMEC notes further that the demobilisation payment was never made, and forms part of its current damages claim against the State.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	61
A. Documents or category of documents requested	Minutes of Alutrint Board Meeting of 13 March 2013.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It was recorded in the Hansard report of 2 December 2016 that on 13 March 2013 "<i>the Board of Alutrint agreed to terminate the EPC contract and associated agreements with CMEC</i>" [C-0045, p. 27]. 2. Further, it was recorded in Alutrint's 2011 and 2012 audited financial statements that on 13 March 2013 "<i>the board of directors announced a Company restructuring plan with a phased separation of employees</i>" [C-0373, p. 27; C-0374, p. 24]. 3. Each of the two matters addressed in this 13 March 2013 Board meeting are significant – hence the request for the minutes. a. As to the matter of the EPC Contract termination, the minutes will provide contemporaneous evidence of Alutrint's understanding of when and how the contract(s) were terminated. This directly contradicts the Respondent's current position in this arbitration, which asserts that Alutrint had terminated the EPC Contracts in January 2012 [Counter-Memorial, ¶ 185]. The minutes are therefore critical to establishing the true chronology and authority behind the termination. b. As to the matter of the company restructuring, the minutes will shed light on Alutrint's operational status in the post-termination phase. The phased separation of employees strongly suggests that Alutrint had ceased functioning as a commercial entity and was instead operating as a State-controlled vehicle for managing post-termination claims and liabilities.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Additionally, the objections to Requests 48-50, 52 and 57 refer – Alutrint's consideration of the termination of the contracts is protected by privilege. Further, as to basis (a) above – Alutrint's understanding of the correct contractual termination position is irrelevant to the present proceedings. This is a treaty claim by CMEC that <u>T&T</u> terminated the project for improper reasons, and in doing so,

	expropriated CMEC's assets. Alutrint's view on the timing of the contractual termination is not relevant to, much less material to the outcome of, that claim. What is more, CMEC's letter to Alutrint dated 16 February 2012 stated explicitly that "We will proceed as instructed on the basis that [Alutrint is] terminating [CMEC's] Contract for your convenience" [R-0009]. [R-0006] was to similar effect. CMEC's position has nothing to do with Alutrint's subjective understanding.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 48-49 (cross-referred to in No. 50), 52 and 57 apply <i>mutatis mutandis</i>. 3. In particular, the assertion of (unspecified) privilege over "<i>Alutrint's consideration of the termination of the contracts</i>" is not substantiated and does not appear to be valid on any ground. 4. As to relevance and materiality: a. CMEC notes that the State has no objection to basis (b) – which means that even for this basis alone this set of Board Minutes should be produced. b. As for basis (a), this concerns how and when the EPC Contracts were terminated, which has consequences for which compensation clause under the EPC Contracts should be invoked. Given the State's own stance that "<i>it is the provisions of the EPC Contracts which identify and define the scope of those rights and also which affect what constitutes proper reparation for the loss of those rights</i>" (Counter-Memorial, ¶ 231), it is a live dispute between the Parties. In this regard, the parties' contemporaneous position is certainly important as it may give rise to estoppel. The evidence shows that Alutrint only agreed to terminate the EPC Contracts in March 2013 and has been consistently so acting in its dealings with CMEC.
E. Decision of the Tribunal	The request is granted.

Document Request No	62
A. Documents or category of documents requested	A briefing paper on the Project prepared by Alutrint CEO in May or June 2010 for presentation to the new Energy Minister Carolyn Seepersad Bachan [C-0026, pp. 1-2].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Mr Frank Look Kin, then Chairman of Alutrint, stated in his email dated 28 May 2010 [C-0026]: <i>"Based on the change of the administration in Government, I have taken the decision to ask the Acting CEO to undertake the following exercises:</i> <i>a. Preparation of a briefing paper on the project to date</i> [...] <i>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."</i> 2. This briefing paper would reasonably be expected to have been taken into account in the preparation of relevant Cabinet Note(s) or otherwise in the Cabinet's decision to terminate the Project. It likely contains Alutrint's internal assessment of the Project's status and strategic options, and may reflect the company's position on the viability of continuation versus termination.
C. Responses and/or objections to document request	Not agreed. T&T's comments in its response to Request 42, with respect to Alutrint documents, refer. Further, this request is speculative both as to the content of the document and its possible use by the T&T cabinet. Even if it does contain the information CMEC ostensibly expects, there is no reason to expect that information to be material to the outcome of the dispute. Searching for and locating the documents after all this time is also likely to be time consuming and onerous. Its low evidentiary value falls to be weighed against these difficulties. The document would, at best, contain a summary of Alutrint's assessment of the project at a particular snapshot in time, which has no or little relevance to the Treaty claim against T&T. In circumstances where production of the document would require extensive searching (it being a historic document with no direct or obvious materiality to any government policy or decision), it would be disproportionate for T&T to complete such searches, in order to produce a document

	with, at best, inferential evidential value (and quite possibly no value at all).
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. It is a material single document. Burden is low and manageable. 3. Alutrint's contemporaneous internal assessment of the Project's status, viability and strategic options is, in and of itself, of great probative value. 4. Further, given the context in which it was prepared, this requested report appears to have formed part of the documents considered by the MEEI and eventually by the Cabinet prior to its formal termination announcement. Whether the State decided to terminate the Project pursuant to or against Alutrint's own recommendations is plainly relevant and material.
E. Decision of the Tribunal	The request is granted.

Document Request No	63
A. Documents or category of documents requested	If different from Request No. 62, the report submitted by Alutrint directors to Energy Minister Carolyn Seepersad Bachan in June 2010 which detailed the status of the Project and was discussed in the Cabinet [C-0242].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is reported in an Express newspaper article of 30 June 2009 [C-0242] that: <i>"[Energy Minister Carolyn Seepersad-Bachan] also has a report submitted by the directors of Alutrint detailing the status of the proposed smelter to be built at the Union Industrial Estate.</i> <i>The report, she said, will be discussed in the Cabinet tomorrow."</i> 2. To the extent that this report is a different document from the briefing paper requested in Request No. 62, this report should also be produced for the same reason explained above.
C. Responses and/or objections to document request	The objection to Request 62 refers.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Request No. 62.
E. Decision of the Tribunal	The request is granted.

Document Request No	64
A. Documents or category of documents requested	If different from Requests Nos. 62 and 63, the report commissioned by Energy Minister Carolyn Seepersad-Bachan containing a review and status of the Project (Counter-Memorial, ¶ 176). The production should include the full report, all annexes, and any supporting documentation relied upon in the report. To the extent that the report described in Counter-Memorial, ¶ 176 is the same document as the briefing paper (Request No. 62) or the directors' report (Request No. 63), all annexes and supporting documentation associated with that paper/report should be produced under this request.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	- Counter-Memorial, ¶ 176 states: <i>"Before the said decision was taken, the then Energy Minister, Carolyn Seepersad-Bachan, commissioned a report containing a review and status of the Project. Accordingly, the Ministry of Energy and Energy Affairs produced a Note for Cabinet dated 16 July 2010. The Note for Cabinet, whose authors were Leroy Mayers and Frank Look Kin, set out the pros and cons of continuing the Project."</i> - The report referenced in that paragraph appears to be the primary (or sole) underlying basis for the Cabinet Note dated 16 July 2010, and likely informed the Cabinet's subsequent decision to terminate the Project in September 2010. - However, the Respondent has not provided a copy of the report, nor has it cited or identified the report in its submissions. - The disclosure of this request in full and all its supporting documentation is essential to assessing the legitimacy of and/or rationale behind the State's termination decision.
C. Responses and/or objections to document request	Not agreed. The Note for Cabinet (C-0248) was, rhetorically, the document submitted to the Cabinet for its consideration. Since the correctness of the State's decision is irrelevant, such supporting documents cannot be material to the outcome of the action. Objections to Request 7 refer. It is also a burdensome and disproportionate exercise.

D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. It is a material single document. Burden is low and manageable. 3. As to the Respondent's assertion that the "<i>correctness</i>" of its decision to terminate the Project is not in issue, CMEC notes that the requested underlying document will bear directly on, among other things, whether the Respondent's decision to terminate the Project or its alleged environmental concern was "<i>not founded in reason or fact</i>" (which the Respondent accepts as an appropriate test for <i>unreasonableness</i> or <i>arbitrariness</i>: Counter-Memorial, ¶ 912).
E. Decision of the Tribunal	The request is granted.

Document Request No	65
A. Documents or category of documents requested	Presentation on the "<i>Project's Status, Compensation and Separation Plan and a company wind-up plan</i>" (including assets and liabilities) in the working session of the Alutrint's "<i>local Board Members</i>" in October 2011. More specifically, the date of the presentation is either 18 October 2011 (per C-0327, p. 5) or 14 October 2011 (per C-0300, p. 1).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This presentation is referenced in two contemporaneous reports prepared by Alutrint's management team [C-0327, p. 5; C-0300, p. 1]. 2. Given the timing, it is likely to have provided or recorded a comprehensive overview of Alutrint's and the Project's status shortly before the State's formal instruction to terminate the Project in January 2012. 3. In particular, it may contain contemporaneous assessments or acknowledgments of liabilities to CMEC, as well as reflecting any direction from or coordination with State actors in determining the closure of the Project.
C. Responses and/or objections to document request	Not agreed. The Respondent relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint's documents are not the Respondent's documents. There are real and genuine concerns, legal and practical, about these requests. Furthermore, CMEC's request fails to explain why an "overview" of the Project's status will be material to the outcome of the proceedings. There is no basis to believe it would be. The true target of the request is, as CMEC notes, Alutrint's internal "assessments or acknowledgments of liabilities." This is not an issue material to the outcome of the case. Further, these matters are clearly subject to (Alutrint's) litigation privilege and/or confidential as part of settlement negotiations, such that if the document is relevant and material in the way envisaged by CMEC, it would not fall to be produced. The objections to Requests 1 and 5, and ¶¶ 56-63 of T&T's Preliminary Remarks, refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution.

	2. As to the State's possession, custody or control of Alutrint's documents, CMEC repeats its Over Replies, ¶¶ 38-40. 3. The Respondent did not dispute the relevance and materiality of "<i>any direction from or coordination with State actors in determining the closure of the Project</i>". 4. As to alleged privilege over Alutrint's internal assessment of or acknowledgment of liabilities to CMEC, the Respondent has failed to substantiate the privilege. The timing is October 2011 (prior to project termination) – litigation was not possibly in reasonable contemplation. There were no without prejudice settlement negotiations initiated with CMEC anytime close in time to October 2011 – a vague or hypothetical intention for future settlement use is insufficient to attract privilege. Further and in any event, it is clear from the context that this presentation was prepared for internal briefing purpose (by Alutrint management to Alutrint board).
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	66
A. Documents or category of documents requested	Any follow-up communications or papers (in whatever form and means) – whether within Alutrint, or between Alutrint and the State, or within the State (e.g. between ministries) – after the presentation titled " <i>Alutrint's financial exposure with CMEC</i> " in January 2012 [C-0327, p. 6; C-0307].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As highlighted in Memorial, ¶ 359, Alutrint prepared an internal presentation in January 2012 estimating its financial exposure to CMEC to be in the order of US \$32 million [C-0307, p. 14]. 2. This demonstrates 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. The existence of such an assessment undermines any suggestion that CMEC's claims were unexpected or unsubstantiated. 3. The Counter-Memorial made no response to CMEC's pleading or the January 2012 presentation. 4. Any follow-up communications or papers (whether at Alutrint level or State level) would be material to understanding how Alutrint and the State responded to the exposure assessment, including whether they took steps to address, contest, or prepare for CMEC's claims and why they failed to communicate transparently with CMEC. 5. These documents may also reveal whether the State directed Alutrint's handling of the matter.
C. Responses and/or objections to document request	The objection to Request 65 refers with respect to documents within Alutrint, and in relation to privilege. The objections to requests 34-36 also refer with respect to T&T's own privilege. For completeness, the exposure assessment (which is <i>per se</i> irrelevant and privileged in any event) concerns the contractual claim by CMEC against Alutrint, not the extant treaty claim against T&T.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 65 applies <i>mutatis mutandis</i>. 3. In response to the Respondent's "for completeness" comment, the January 2012 financial exposure assessment is clearly material and not privileged. It was prepared for the dominant

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	or sole purpose of internal board presentation / briefing – not a protected purpose of any form of privilege.
E. Decision of the Tribunal	The request is granted.

Document Request No	67
A. Documents or category of documents requested	Any Alutrint Board minutes or resolutions in which a decision was made to pay, or not to pay, any part of the outstanding debt owed to CMEC. <u>CMEC 12/09/2025</u>: CMEC clarifies and confirms that this request does not seek Board decisions relating to payments that have been made to CMEC. As stated in the request, it is limited to decisions to pay, or not to pay, any part of the <i>outstanding</i> debt owed to CMEC.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This Request No. 67, together with the following Request No. 68, seeks documents that address the decision-making process concerning the payment or non-payment of CMEC's outstanding debt. 2. Together, these requests will help determine whether Alutrint's conduct was autonomous or directed by the State, and whether CMEC was treated fairly and transparently in the post-termination phase. 3. In particular, a decision not to pay or to withhold or delay or defer payment would be critical to CMEC's FET and non-impairment claims. 4. Documents responsive to this request, or an absence thereof, will: a. evidence Alutrint's contemporaneous recognition of its financial obligations to CMEC, including whether any part of the debt was acknowledged, disputed, or deferred; b. demonstrate whether Alutrint's Board exercised independent decision-making or whether it acted under the direction or control of the State; and/or c. establish whether Alutrint's Board had formally considered or resolved upon the payment of CMEC's outstanding debt.
C. Responses and/or objections to document request	Not agreed. The objections in Request 66 refer. Such deliberations likewise concern settlement considerations of CMEC's contractual claims against Alutrint, which are both irrelevant and privileged. Further, this request imposes an excessive burden. It would require a search of board minutes over a wide date range, seeking any minute which records decisions relating to payments to CMEC. This would also have little, if any, probative value: the parties know the sums that were paid to CMEC and the dates on

	which such sums were paid. A board minute confirming the decision to pay or not pay (if any such document exists) adds nothing. Yet further, T&T rejects the suggestion that the absence of such documents is suggestive of anything. It is not generally necessary to record, in a board minute, a company's decision to pay a contractor. That would be impractical, which CMEC seems to recognise, given that it refers to the potential absence of such documents in its request. Such reference to the absence of the documents also calls into question whether CMEC genuinely believes the documents to exist and be within T&T's possession. It appears more likely that CMEC does not believe there are any such documents, and is seeking to use its production requests to set up a pleading point in relation to their absence (which, for the reasons above, would be misguided in any event). This request is therefore unnecessary and risks infringing the smooth operation of the arbitral proceedings.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. As to the blanket assertion of privilege, it is improper and unsubstantiated. 3. As to the alleged burden, as discussed in Request No. 46 above, the number of Alutrint Board meetings is likely somewhere between 0-2 each year – the burden of search is low and manageable. 4. Alutrint-level decision documents are reasonably expected to exist if the State's defence (that Alutrint is an autonomous independent entity) is taken at its face value. The request should be granted – should there be no responsive documents, CMEC will join issue with the Respondent on what the absence of such documents suggests.
E. Decision of the Tribunal	The request is granted.

Document Request No	68
A. Documents or category of documents requested	Any instructions, directions, notifications or other communications from the State to Alutrint regarding the payment or non-payment of any part of the outstanding debt owed to CMEC. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: Any instructions, directions, notifications or other <u>similar</u> communications from the State to Alutrint <u>regarding that instruct, direct, notify, advise or otherwise influence</u> the payment or non-payment of any part of the outstanding debt owed to CMEC. <u>Time range: 2012 (year when the Project was terminated) to present.</u> <u>Clarification: This request does not seek communications relating to payments that have been made to CMEC. As stated in the request, its scope is limited to any part of the <i>outstanding</i> debt owed to CMEC.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the comments in Request No. 67, ¶¶ 1-3. 2. Documents responsive to this request will: a. demonstrate the extent of State involvement in Alutrint's financial decisions; b. evidence whether the State approved, delayed, or blocked payments, and the reasons for such actions; and c. establish whether Alutrint acted as a State instrumentality, particularly in relation to its handling of CMEC's claims.
C. Responses and/or objections to document request	Not agreed. This request is manifestly too broad and unfocussed, such that it would be unduly burdensome for T&T to produce such documents. The request would require T&T to search many years' worth of correspondence for all individuals who had, or may have had, any contact with representatives of Alutrint, for correspondence fitting an extremely broad category (in effect, the request covers any correspondence which relates at all to any sum due or payment made/requested under the EPC Contracts). This is not a request for a specific category of documents which CMEC believes to exist; rather it is a request for T&T to comb

	through its historic correspondence for documents which relate to a specific issue. It is, of course, impossible for CMEC to aver that the documents requested will be material to the outcome of the proceedings, because it is impossible to predict what the responsive documents (if any) would look like or demonstrate. T&T therefore considers that this request is plainly without the bounds of the IBA Rules and is an improper document production request. Further and in any event, CMEC's reference to the "outstanding debt owed to CMEC" demonstrates that CMEC is seeking documents that pertain to T&T and Alutrint's treatment of CMEC's claim against the latter. That material is privileged: the objections to Requests 1, 5, 34-36 and 66-67 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. This request is directed at a central issue in this arbitration – the State's involvement, influence, and/or control of the (non-)payment by Alutrint to CMEC. The current formulation is clear, effective and measured. 3. There is no blanket privilege over "<i>documents that pertain to T&T and Alutrint's treatment of CMEC's claim</i>" is unsubstantiated and unsustainable.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.

Document Request No	69
A. Documents or category of documents requested	To the extent not covered by the above requests, any other Alutrint board minutes, resolutions, and/or papers which addressed, assessed, or otherwise reviewed CMEC's claim in relation to the Project (including the settlement or negotiation thereof or other response strategy thereto). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: To the extent not covered by the above requests, any other Alutrint board minutes, resolutions, and/or papers which addressed, assessed, or otherwise reviewed CMEC's <u>payment</u> claim(s) in relation to the Project <u>(to the extent that the payment(s) requested have not been settled)</u> ~~(including the settlement or negotiation thereof or other response strategy thereto)~~.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. These documents are necessary to enable a holistic assessment of Alutrint's conduct (or inaction) in relation to CMEC's claim. 2. This request is limited to documents that directly "<i>addressed, assessed, or otherwise reviewed</i>" CMEC's claim. It does not extend to documents containing only peripheral or incidental references.
C. Responses and/or objections to document request	Not agreed. T&T objects to this request for the reasons set out at paragraphs 12-20 of its Preliminary Remarks. Further, the objections to Requests 66-68 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. CMEC's replies in Requests Nos. 66-68 apply <i>mutatis mutandis</i>. 3. The original note in brackets is intended to clarify that some of the responsive documents under this request may reflect Alutrint's approach to whether to actively settle, negotiate, or otherwise engage with CMEC's payment claims – or, alternatively, to delay, defer, or take no action. 4. However, as the Respondent has raised interpretative issues with the bracketed language, in the interest of avoiding unnecessary arguments, CMEC is prepared to remove it. The

	description of "<i>addressed, assessed, or otherwise reviewed</i>" is sufficiently targeted and inclusive. 5. The Respondent's assertion of blanket privilege in Preliminary Remarks, ¶ 19 ("<i>plainly [...] coming within</i>" without prejudice privilege) is unsubstantiated and unsustainable. CMEC repeats that, for without prejudice privilege to attach, the documents must be created specifically for the purpose of confidential settlement negotiations, not merely related to them in a general or tangential way. A vague or hypothetical intention to use the document in some future settlement context is insufficient to attract privilege.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.

Document Request No	70
A. Documents or category of documents requested	Alutrint exit report (or similar document) by: (1) Mr Steve Mohammed – Alutrint's Project Coordination Manager, April 2007 to November 2011; Acting CEO, November 2011 to <u>February 2013</u> [C-0368, ¶¶ 61, 69; C-0345, p. 1] (2) Ms Colleen Murray – Alutrint's Manager, Legal and Corporate Secretariat Services, April 2006 to June 2006; Company Secretary, June 2006 to <u>December 2013</u> [C-0368, ¶ 3] (3) Ms Sushma Gopeesingh – Alutrint's Chairman, September 2011 to <u>June 2016</u> [C-0368, ¶ 60; C-0502, p. 48]
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is in evidence that Alutrint's then Acting CEO, Mr Philip Julien, submitted an exit report as of 30 October 2011 [C-0300] prior to his departure from the company in November 2011. Mr Julien's exit report is informative and detailed, providing important contemporaneous insights into the status of the Project in his tenure. 2. Mr Philip Julien was succeeded by Mr Steve Mohammed as Acting CEO, whose responsibilities were subsequently taken over by Ms Colleen Murray in her capacity as Corporate Secretary (C-0345, p. 1: "<i>Pursuant to Board resolution and in lieu of a CEO, please direct correspondence to my attention [in] my capacity of as [sic] Corporate Secretary</i>"). After Ms Murray left in December 2013, it appears that Ms Sushma Gopeesingh (Chairman) then became the point of contact for outstanding matters relating to the Project. 3. To the extent that any or all of these individuals also submitted an exit report or similar document prior to leaving their respective roles at Alutrint, such documents would be important sources of contemporaneous information (including e.g. assessments of liabilities to CMEC and meetings and discussions with CMEC).
C. Responses and/or objections to document request	Not agreed. The Respondent relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint's documents are not the Respondent's documents. There are real and genuine concerns, legal and practical, about these requests. Furthermore, this request is no more than a fishing expedition. CMEC is speculating as to the existence of these documents, let

	alone their content if they do exist. It cannot sensibly be said that these documents are necessary or useful to the resolution of the proceedings (particularly when it cannot confidently be said that any of them exist). Requests which speculate that a class of documents might exist, and if so, might have some degree of relevant or material information, are paradigmatic examples of the type of fishing expedition that Article 3.3 of the IBA Rules specifically seeks to preclude (as confirmed in the commentary to the IBA Rules). Yet further, “providing important contemporaneous insights into the status of the Project” is vague and hardly a sufficient description of materiality to the outcome of the case. It also appears that such “insights”, which explicitly include “assessments of liabilities to CMEC,” is likely to contain privileged material.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. <u>As to the State's possession, custody or control of Alutrint documents</u>, CMEC repeats its Overall Replies, ¶¶ 38-40. 3. <u>As to relevance and materiality</u>: a. Based on the past practice of Mr Philip Julien submitting an exit report, there is a reasonable basis to believe his successors would have followed a similar practice upon their departure from Alutrint. b. Mr Mohammed, Ms Murray and Ms Gopeesingh were likely the three individuals most closely involved with Alutrint's (limited) operations during the period from 2012 to 2016. Mr Mayers (re-)assumed the Chairmanship in 2016 and is giving evidence in this arbitration. c. Their exit reports are therefore expected to contain important contemporaneous information regarding the status of the Project, Alutrint and its liability settling efforts. Such information may include the post-termination positioning of Alutrint and its reporting relationship with the MEEA/MEEI. d. To the extent that the exit reports contain assessments of liabilities owed to CMEC, this is a clear instance where privilege will not attach – these reports were created for the dominant or sole purpose of handover or company record-keeping, not for obtaining advice or conducting settlement negotiations. They are non-privileged background documents and are fully disclosable.

E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.
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Document Request No	71
A. Documents or category of documents requested	The recordings, minutes, notes, briefs, summaries, reports and other similar documents recording or reflecting the content of and any follow-up for various meetings with CMEC. The list of meetings includes non-exhaustively: (1) CMEC's meeting with Minister of Works and Transport, Jack Warner, on 21 October 2010 [C-0261; C-0262, p. 1] (2) CMEC's meetings with Permanent Secretary S. Thompson on 26 April and 20 May 2011 [C-0283] (3) CMEC's meeting with Minister of Finance, Winston Dookeran, on 27 November 2011 [C-0306] (4) CMEC's meeting with Minister of Finance and the Economy, Larry Howai, on 31 July 2012 [C-0332] (5) CMEC's meeting with Alutrint Board on 9 October 2013 [C-0362] (6) CMEC's meeting with Minister of Energy and Energy Affairs, Kevin Ramnarine, on 26 February 2014 [C-0372] (7) CMEC's meeting with Minister of Finance and the Economy, Larry Howai, on 8 April 2014 [C-0375] (8) CMEC's meeting with Minister of Energy and Energy Affairs, Kevin Ramnarine, and Minister of Trade, Industry, Investment and Communications, Vasant Bharath, on 9 April 2014 [C-0376] (9) CMEC's meeting with Minister of Energy and Energy Affairs, Kevin Ramnarine, on 24 July 2014 [C-0379] (10) CMEC (through its local representative, Ian Anthony)'s meeting with three Government Ministers on or around 21 August 2014 (in which Mr Anthony requested that "<i>good faith' be shown and that [the State] advance the sums immediately available to Alutrint as a partial settlement</i>") [C-0382] (11) CMEC's meeting with Trinidad and Tobago's Ambassador to China, Chandradath Singh, on 24 November 2014 [C-0390] (12) CMEC's meeting with Minister of Housing and Urban Development, Roodal Moonilal, in or around August 2015 (in which CMEC was offered a settlement sum of US \$25 million) [Memorial, ¶ 410 and fn. 801; QW WS, ¶ 66]

	(13) CMEC's meeting with PNM Government representatives on 7 October 2015 [C-0406, p. 118] (14) CMEC's meeting with Trinidad and Tobago's Ambassador to China, Chandradath Singh, on 13 November 2015 [C-0409] (15) CMEC's meeting with Minister of Finance, Colm Imbert, on 8 November 2016 [C-0419] (16) CMEC's meeting with Advisor to the Prime Minister, Professor Kenneth Julien, on 9 November 2016 [C-0421] (17) CMEC's meeting with the (PNM Administration) Committee on 20 January 2017 [C-0431] (18) CMEC's meeting with Minister in the Office of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister, Stuart Young, on 13 May 2017 [C-0438] (19) CMEC's meeting with PNM Government representatives on 20 October 2017 [C-0445, p. 14] <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation (together with the requested semantic clarifications): <u>Sub-category (1)</u> The recordings, minutes, notes, briefs, summaries, reports and other similar documents recording or reflecting the content of ~~and any follow-up for various~~ <u>the</u> meetings with CMEC <u>listed in items (1)-(19) below</u>. ~~The list of meetings includes non-exhaustively:~~ [...] <u>Sub-category (2)</u> <u>Documents recording or reflecting any follow-up reporting, consideration, decisions or actions – whether within the State, within Alutrint, or between the State and Alutrint (as applicable) – subsequent to the meetings with CMEC listed in items (1)-(19) below: [...].</u> <u>In both sub-categories, "recording" is intended to target documents that simultaneously capture or transcribe the content of the meetings or the follow-up events; and "reflecting" is intended to capture other documents that, although not simultaneous in time,</u>
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	<u>nonetheless demonstrate, convey or summarise such content.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The relevance and materiality of this category of documents are self-evident and multi-fold. 2. Without limiting the full relevance of documents in relation to each meeting, set out below are some major observations. 3. These meetings reflect direct engagement between CMEC and State officials. Records of these meetings or their follow-ups are material to establishing the extent to which the State – not Alutrint – was the primary decision-maker and liaison in the interactions and negotiations with CMEC. 4. Many of these meetings involved discussions of settlement proposals, requests for preliminary payments, and appeals for good faith engagement. Documentation of these interactions is relevant to assessing whether CMEC was treated fairly and transparently, and whether the State engaged in meaningful efforts to resolve the dispute or instead delayed or obstructed resolution. 5. The request also seeks any follow-up documentation, which may reveal internal deliberations within Alutrint or the State regarding CMEC's proposals or demands for payment. These materials are important for understanding how CMEC's claims were received, evaluated, and acted upon – or ignored.
C. Responses and/or objections to document request	Not agreed. T&T objects to this request for the reasons set out in ¶¶ 22-29 and 44-47 of its preliminary remarks.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. <u>As to possession, custody or control:</u> a. CMEC repeats its Overall Replies, ¶¶ 43-47 regarding the good faith representation that CMEC is not in possession, custody or control of the requested documents (i.e CMEC did not record or take notes of these meetings out of courtesy to the high-level officials). b. The State, on the other hand, is reasonably believed to have recorded some of the meetings or taken contemporaneous notes. For example, the meeting photo in [C-0306] shows a digital audio recorder; and the meeting photos in [C-0379] and [C-0438] show the State's staff were taking notes contemporaneously.

	3. <u>As to the alleged lack of specificity and associated burden</u>, it is a red herring for the Respondent to suggest an unacceptable burden by reference to the time span between the earliest and latest listed meeting (Preliminary Remarks, ¶ 23). The obvious point is that the Respondent simply does <i>not</i> need to conduct an indiscriminate review of all files spanning seven years. 4. Instead, in each instance, CMEC has identified the <i>specific date</i> of the relevant meeting. Accordingly, the Respondent's searches are expected to be limited to materials that are contemporaneous with, or created within a short period after, each identified meeting. Such searches are necessarily time-focused and sufficiently targeted. 5. <u>As to the alleged application of without prejudice privilege</u>, CMEC repeats its Overall Replies, ¶¶ 73-76 – the meetings in Sub-category (1) were all conducted on an open basis, and in several instances directly involved third parties (for example, meetings (7), (9), (11) with the Chinese Ambassador present). 6. Furthermore, the entire Sub-category (2) concerns follow-up reporting, consideration, decisions or actions <i>subsequent to</i> the negotiation meetings with CMEC – these documents plainly fall outside the scope of without prejudice privilege, which applies only to documents created for the purpose of conducting confidential negotiations.
E. Decision of the Tribunal	The request is granted in part, limited to those documents responsive to sub-category (1).

Document Request No	72
A. Documents or category of documents requested	Attachment to the letter from Ambassador Chandradath Singh to Senator Dennis Moses (the then Minister of Foreign and CARICOM Affairs) dated 18 November 2015 [C-0410, pp. 3-4]. More specifically, the attachment is a letter from CMEC to Ambassador Singh [C-0410, p. 4].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Ambassador Singh's 18 November 2015 letter stated [C-0410, pp. 3-4]: <i>"CMEC is still interested in building the Smelter and has listed several points in support of re-starting the project. In the event that this is not possible, the company suggested that it can build any other suitable project in Trinidad and Tobago which could help to reduce the amount which it is owed for the Alutrint Project. [...] It certainly wants to have discussions on monies owed to the company for the Smelter project."</i> 2. The attached letter from CMEC should contain more details regarding CMEC's proposal and requests. For the avoidance of doubt, CMEC confirms that this letter is not presently in its possession, custody or control – hence this request to the Respondent. 3. In particular, the Counter-Memorial (e.g. ¶ 1159(5)) appears to insinuate that CMEC stalled payment negotiations by (unreasonably or unrealistically) insisting on undertaking a new project in Trinidad and Tobago. 4. This is a serious mischaracterisation of CMEC's position. As reflected in Ambassador Singh's letter – and as will be further clarified by the requested attachment – CMEC's openness to undertaking a new project was a good-faith attempt to reduce the cash payment burden on the State, not a condition or obstruction to settlement.
C. Responses and/or objections to document request	This request, to produce CMEC's own correspondence to them, is improper and unduly burdensome for the reasons set out in ¶¶ 44-47 of T&T's preliminary remarks. Nonetheless, T&T is aware of the document and in the interest of cooperation will produce it.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's confirmation that it is in the possession, custody or control of the requested attachment and that it will produce the same.

	2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	73
A. Documents or category of documents requested	Documents recording or reflecting the State's decision to offer, and the actual offer of, US \$15 million preliminary good faith money to CMEC (including through its local representative) in or around August to September 2014 (including the reasons therefor). For the avoidance of doubt, this category of requested documents <u>excludes</u> documents already on the evidentiary record that refer to the US \$15 million offer, such as CMEC's letters of 30 December 2014 [C-0391, pp. 2-3] and 3 November 2015 [C-0046, p. 4], and the Hansard report of 2 December 2016 [C-0045, p. 27]. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC offers the following semantic clarifications: Documents "recording" or "reflecting" the described matters (i.e. the State's decision to offer and actual offer of the US \$15 million good faith money) are not to be taken as "<i>any documents of any kind relating to</i>" them. Instead, the request is targeted at documents that directly record, evidence, or otherwise capture the decision, the offer, and their content or substance. It does not extend to documents that contain only tangential, incidental, or peripheral references.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The State did not dispute having made this US \$15 million offer to CMEC: Counter-Memorial, ¶ 599. 2. In the same paragraph it however seeks to dissociate itself from the offer by asserting that the payment "<i>was to come from the account of Alutrint</i>". 3. Taking the Respondent's defence at its face value, this then raises the question as to who made the decision to offer the good faith payment, on what authority, and with what intent. 4. The requested documents will directly bear on the basis and rationale underlying the State's decision to make – and its presentation of – the US \$15 million offer to CMEC, including whether it was a State offer to be implemented through Alutrint's account or an Alutrint offer communicated through the State. 5. Further, the requested documents are material to determining whether the offer, which was only made after CMEC's

	indication of intention to commence arbitration [C-0047], was: a. a genuine good-faith attempt to resolve CMEC's claims; or b. a tactical move aimed at delaying or deflecting CMEC's initiation of formal dispute resolution process.
C. Responses and/or objections to document request	Not agreed. T&T objects to this request on several grounds. <u>Privilege</u> CMEC's own request acknowledges that it is seeking, in this request, information regarding Alutrint or T&T's consideration of CMEC's claims under the EPC Contracts, and their approach to the possible settlement thereof. That is clearly privileged material which is protected under the IBA Rules, as described in T&T's Preliminary Remarks. The good faith payment was plainly offered in the context of attempting to settle a dispute with CMEC (specifically its contractual dispute with Alutrint) and is privileged. <u>Lack of specificity and narrowness</u> CMEC again uses the phrase "documents recording or reflecting" to frame its request. This is tantamount to requesting "any documents of any kind relating to" a given issue. It is the antithesis of a focussed request for a narrow and specific category of documents; rather it seeks a sweeping disclosure exercise in respect of the good faith payment. That is inappropriate and T&T does not agree to undertake such an exercise. <u>Relevance and materiality</u> CMEC's request acknowledges that the fact of the good faith payment being offered to CMEC is not in dispute, and that it is already evidenced in the proceedings. For the reasons given above, any documents "recording or reflecting" T&T's, or Alutrint's, reasons for doing so would be privileged. It is therefore not clear what non-privileged material could be produced that would have any bearing on the proceedings. The allegation that T&T "<i>seeks to dissociate itself</i>" from the offer by asserting that the payment "<i>was to come from the account of Alutrint</i>" (underlining added) is not understood. This fact was expressly recorded in CMEC's own 3 November 2015 letter to the Prime Minister, Dr Keith Rowley (C-0046).

	“...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.” See also the Counter-Memorial, ¶ 215(2). Again, these matters concern CMEC’s contractual claims against Alutrint, not the extant treaty claim against T&T. <u>Proportionality and burden</u> For the reasons described above, acceding to this request would require T&T to undertake a substantial search exercise, under which little, if any, relevant and disclosable material would be produced – and that which was would be unlikely to be material to the outcome of the proceedings. It would therefore be disproportionate and unduly burdensome for T&T to carry out that search.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. <i>Privilege</i> 2. There is no blanket privilege over "<i>information regarding Alutrint or T&T's consideration of CMEC's claims under the EPC Contracts, and their approach to the possible settlement thereof</i>". CMEC refers the Tribunal to its Overall Replies, ¶¶ 31, 66-76. The Respondent has failed to properly and specifically establish the existence of any applicable privilege. 3. Further, the US \$15 million good faith payment was offered as part of <u>open negotiations</u>, as evidenced by open references to it by both CMEC in its contemporaneous correspondence [C-0391, pp. 2-3; C-0046, p. 4] and by Trinidad and Tobago's Prime Minister in public parliamentary proceedings [C-0045, p. 27]. 4. The Respondent did not raise any objection in its Counter-Memorial to CMEC's references to this offer or the related negotiations/discussions. Instead, it engaged with the substance of the offer, disputing its details [Counter-Memorial, ¶¶ 598-599]. 5. Accordingly, any privilege – if it ever existed – has been waived by consent, prior disclosure, and/or affirmative use. 6. The Tribunal should therefore order the production of all responsive documents relating to the subject matter of the US \$15 million offer, without redaction.

	<i>Specificity and Narrowness</i> 7. Without accepting the validity of the Respondent's objection, CMEC has provided additional clarifications to this request to eliminate any doubt as to its scope. <i>Relevance and Materiality</i> 8. The requested documents are not privileged and are material to the issues in dispute. CMEC reiterates the reasons set out in Section B. 9. Insofar as documents recording the presentation or content of the offer are concerned, they will settle the present dispute on – as explained in Section B, ¶ 4 – "<i>whether it was a State offer to be implemented through Alutrint's account or an Alutrint offer communicated through the State</i>". 10. Insofar as documents recording the decision and reasons for the offer are concerned, they will evidence the matters explained in Section B, ¶ 5 – i.e. whether the offer was a genuine good-faith attempt to resolve CMEC's claim, or a tactical move aimed at delaying or deflecting CMEC's initiation of formal dispute resolution process. <i>Proportionality and Burden</i> 11. The requested documents are not privileged, fall within a narrow time frame (August to September 2014), and pertain to a specific subject matter. 12. The burden of production is low, and is clearly outweighed by the documents' high probative value.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	74
A. Documents or category of documents requested	Documents recording or reflecting the State's decision to renege on or not implement the promised US \$15 million preliminary good faith money (including the reasons therefor).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The State (again) disengaged after making the offer of the US \$15 million preliminary good faith money. 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: Memorial, ¶¶ 403, 405. 2. In the Counter-Memorial, the State provided no explanation for its failure to follow through on this offer. 3. The requested documents are material to assessing whether the offer was made in good faith, or whether it was a tactical gesture intended to delay or deflect CMEC's pursuit of formal dispute resolution. 4. Mor specifically, the requested documents will establish: a. whether the offer was ever intended to be honoured, or was merely a political or strategic maneuver; and b. whether the State intervened to block or reverse the implementation of the payment.
C. Responses and/or objections to document request	The objections to Request 73 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 73 apply <i>mutatis mutandis</i> (including, for the avoidance of doubt, the clarification regarding the intended scope of "recording" or "reflecting").
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	75
A. Documents or category of documents requested	Documents recording or reflecting the State's decision to offer a settlement sum of US \$25 million (or any other amount) to CMEC during the period from March to September 2015 (including the reasons therefor). <u>Note:</u> The US \$25 million offer was made in a meeting with CMEC in or around August 2015, the records of which have been separately requested in Request No. 71(12) above.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC has pleaded in Memorial, ¶ 410 the circumstances surrounding this US \$25 million settlement offer made by the State. 2. The Counter-Memorial made no response to this pleading, and entirely circumvented any discussions taking place between the State and CMEC following CMEC's issuance of the formal DAB notice in March 2015 [C-0048]. 3. This request seeks documents (including e.g. Cabinet Minutes, Cabinet Notes, internal correspondence, meeting notes, memoranda, etc.) that record or reflect the State's decision to offer a settlement sum to CMEC during the period from March to September 2015. 4. These documents are material to: a. establishing whether the offer was made as part of a genuine effort to settle CMEC's claims, or whether it was a (continued) strategic gesture intended to delay or deflect the formal dispute resolution process; and b. clarifying the State's assessment of its exposure or liability to CMEC at the time.
C. Responses and/or objections to document request	The objections to Request 73 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 73 apply <i>mutatis mutandis</i> (including, for the avoidance of doubt, the clarification regarding the intended scope of "recording" or "reflecting").
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	76
A. Documents or category of documents requested	Documents recording or reflecting any further communications or deliberations within the State following CMEC's rejection of the US \$25 million settlement offer in or around August 2015.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This request similarly goes to the question of whether the State acted in good faith in its dealings with CMEC, or whether the offers for payment were part of a "<i>teleologically driven action</i>" by the State (i.e. State conduct which is driven by a purpose or design – see Counter-Memorial, ¶ 654). 2. The requested documents will establish: a. whether the US \$25 million offer was ever intended to be honoured; b. whether the State considered or authorised any follow-up action, including revised offers or alternative settlement proposals; and c. whether the State chose to disengage after CMEC's rejection, and if so, why.
C. Responses and/or objections to document request	The objections to Request 73 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 73 apply <i>mutatis mutandis</i> (including, for the avoidance of doubt, the clarification regarding the intended scope of "<i>recording</i>" or "<i>reflecting</i>").
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	77
A. Documents or category of documents requested	Documents evidencing or reflecting: (1) whether the PNM administration Committee (established in November 2016) hired one or more legal experts (i.e. lawyers, however described) to review CMEC's claim or claim documents (2) if so, (a) when the Committee hired the legal expert(s); and (b) when the legal expert(s) completed the review and rendered their report (3) if not, what the reason was for the non-hiring of lawyers (including if it was due to Cabinet non-approval as previously alleged, the reason why the Cabinet decided not to procure legal services) To avoid any doubt, CMEC is requesting documents shedding light on the <u>timing</u> and <u>existence</u> of any lawyer hiring <i>and</i> claim analysis. To the extent that any content of the analysis is properly protected by privilege, CMEC has no objection to it being redacted in accordance with and subject to PO1, § 15.6.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. At the first meeting between CMEC and the PNM administration Committee on 20 January 2017, a second meeting was scheduled for 20 February 2017 [C-0432, p. 1]. 2. However, just three days before the scheduled reconvening date, the Committee suddenly cancelled the meeting, purportedly on the ground that "<i>we are still in the process of gathering documents and garnering assistance on the matter</i>" [C-0433, p. 2]. 3. Thereafter, the Committee kept declining to reconvene the meeting with CMEC by alleging (unexplained) delays in the hiring of lawyers: a. On 15 March 2017, the Permanent Secretary of MOF suggested that "<i>pursuant to Cabinet's decision, [the Committee] is in the process of hiring a legal expert on the matter to review the relevant documents and act as the Government of the Republic of Trinidad and Tobago's advisor during the negotiation process.</i>" [C-0054] b. On 12 May 2017, the Permanent Secretary said that "<i>the Ministry of Finance is still in the process of procuring said legal expert and we hope to receive a decision from Cabinet soon and upon receipt of said decision, the</i>

	<i>Ministry will have the selected legal expert review the documents."</i> [C-0055] c. On 17 August 2017, it was further stated that: "<i>to date, there has been no decision on the procurement of said legal expert and we hope to have a decision on this soon, so that the review can be conducted.</i>" [C-0443] d. However, contrary to these suggestions and despite the lack of updates to CMEC, the State appears to have completed the review and arrived at a quantitative assessment of CMEC's claim in the order of US \$100 million by October 2017 – hence Prime Minister Rowley made the statement in Parliament on 20 October 2017 that "[w]e have liabilities there in the approximation of about US \$100 million." [C-0445, pp. 13-14] e. Subsequently, in early March of 2018, CMEC was informed that the Committee was "<i>working on the hiring of new lawyers by now</i>" (emphasis added). [C-0453] f. On 9 April 2018, upon CMEC's further follow-up, a Committee member provided what later turned out to be the last update CMEC received: "<i>The 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>" (emphasis added) [C-0056] 4. The above events have also been summarised in Memorial, ¶¶ 426-432, to which the Counter-Memorial made no response. 5. On any view, whether the State has genuinely engaged in the review of CMEC's claim only to be hindered by an extraordinarily lengthy lawyer-hiring process – as the State contended at the time, and the truth of which will be substantiated by the documents requested – is relevant and material to the question of whether the State has acted consistently, transparently, in good faith, and/or in accordance with due process, in its dealings with CMEC: Memorial ¶¶ 647-658 v. Counter-Memorial § J.6. 6. Furthermore, the State argues that its non-payment of CMEC's claims does not constitute a "<i>measure</i>" for the purposes of the expropriatory breach because "<i>it was not a teleologically driven refusal to act, T&T having no purpose or design to avoid any proper liability nor to deprive CMEC of any proper right to payment of its claims</i>" (Counter-Memorial, ¶ 659) – the requested documents will shed light on whether the State has deployed any purposeful,
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	teleologically driven decision to avoid payment and frustrate or foreclose CMEC's claim.
C. Responses and/or objections to document request	Not agreed. This request, which is overly broad in any event (“evidencing or reflecting”), is meretricious and lacks any prospect of genuinely affecting the outcome of the proceedings. All documents which pertain to the instruction of legal advisors in relation to the contractual claims against Alutrint, and the review and advice pursuant to those instructions, are, as CMEC acknowledges, innately privileged. CMEC seeks to suggest that the mere timing of these instructions is sufficient evidence to be relevant and material to the proceedings. That is implausible. Say, <i>arguendo</i>, that CMEC identifies what it alleges to be a long delay in the instruction of the legal advisors, or a long delay in the completion of their advice. Its request suggests that it will treat this, of itself, as material evidence of bad faith. That cannot be correct. The dates and time periods themselves cannot show bad faith – that could only be demonstrated by understanding the <u>reasons</u> for those delays, which could only be understood by going behind T&T’s (or Alutrint’s) privilege. Without seeing the underlying communications and advice from the legal advisors (which CMEC plainly is not entitled to see), it is not possible to make any sound and proper determination on the basis of the length of time which such instructions or advice took. In short, the information sought by CMEC under this request would clearly be insufficient to stand as evidence of anything, unless supported by the further detail that is privileged and will not be available. The request therefore has no prospect of producing information material to the outcome of the proceedings. CMEC’s request is therefore either misconceived, or represents an intention on CMEC’s part to seek to cast aspersions on T&T’s conduct by reference to time lapses, knowing that T&T is not able to answer such an allegation without waiving privilege, and/or seeking Alutrint’s consent to waive its privilege as well. The entire train of enquiry is inappropriate and beyond that envisaged in the Rules.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. The clarification provided in Request No. 73 (Section A) in relation to the intended scope of "<i>recording</i>" or "<i>reflecting</i>" applies <i>mutatis mutandis</i>. 2. The Respondent's response misses the point and instead refutes a strawman argument of its own making – it argues

	that the issue concerns how long the State took to hire a lawyer or complete its internal review. 3. The real issue is <i>not</i> the duration of the process <i>per se</i>, but rather: when did the State complete the hiring of legal counsel and the review of CMEC's claims? Did the State misrepresent its position to CMEC by claiming it was still seeking legal advice while, in fact, it had already received and considered that advice? Did it fail to update CMEC on the outcome of the review, despite having previously asked CMEC to wait – and CMEC having done so for over a year? 4. These are questions that will be readily answered by the <u>timing</u> and <u>existence</u> of any lawyer hiring and claim analysis.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	78
A. Documents or category of documents requested	Documents evidencing or reflecting whether the State (including the Ministry of Finance) took steps to reconvene the meeting with CMEC originally scheduled for 11 February 2020, including any consideration of alternative arrangements such as virtual meetings. CMEC expects responsive documents to take the form of e.g. internal deliberations or correspondence that demonstrate the State's scheduling efforts and the reasons why the meeting was not reconvened. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that: (i) the time range for the search is <u>from February 2020</u> (when the original meeting was cancelled) <u>to August 2022</u> (when CMEC submitted the Notification of Claim) (see further Section D, ¶ 10(a) on the suggested focused periods); and (ii) to the extent that the State did not take or abandoned steps to reconvene the meeting with CMEC, the documents produced should evidence or explain the reasons.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. A meeting between CMEC and Finance Minister Colm Imbert was scheduled for 11 February 2020 [C-0472], but did not take place due to Trinidad and Tobago's imposition of Covid-19 travel restrictions [C-0474]. 2. Thereafter, throughout 2020, CMEC made numerous requests to reconvene the meeting, either physically [C-0475] or virtually [C-0478; C-0480; C-0482; C-0484]. 3. During this period, Mr Imbert replied twice indicating that he would "soon" arrange the meeting: a. On 27 February 2020: "<i>As soon as I have a clear picture, I will respond positively.</i>" [C-0476, p. 1] b. On 29 June 2020: "<i>Not at this time. Will arrange [a virtual meeting] soon, however</i>" [C-0479, p. 1] 4. The meeting was not arranged as promised. As a result, by letter dated 29 June 2021, CMEC gave notice of its intention to commence legal action failing a satisfactory response from the State by the end of July 2021 [C-0486, p. 2]. 5. Mr Imbert responded on 1 July 2021, stating: "<i>My understanding of this situation was that travel was not possible at the time due to the restrictions of the pandemic.</i>"

	<i>Perhaps a virtual meeting can be arranged, if that will assist the process" [C-0487].</i> 6. Despite this initial quick response, Mr Imbert again disengaged after CMEC actively progressed the preparations for the virtual meeting [C-0488; C-0058]. 7. The above events have also been summarised in Memorial, ¶¶ 440-445, to which the Counter-Memorial made no response. 8. Similar to the reasons explained in Request No. 77, ¶¶ 5-6 above, the requested documents will – through establishing whether the State genuinely intended to reconvene the meeting with CMEC as it claimed at the time – be relevant and material to (<i>inter alia</i>) CMEC's expropriation and FET claim. 9. The absence of such documents would suggest a systemic strategy of delay and an abuse of the trust and confidence CMEC had placed in the State (Memorial, ¶¶ 646, 657).
C. Responses and/or objections to document request	Not agreed. <u>Relevance and Materiality</u> The requested documents have no more than tangential relevance to these proceedings, and there is no prospect that they would be material to the outcome of the claim. CMEC's request effectively targets documents such as internal emails proposing dates and arranging diaries. These are trivial. It is accepted that Mr Imbert sent the emails to which CMEC refers in its request, and that the meeting did not take place. The factual pattern is not in dispute and CMEC's suggestion that T&T's "scheduling efforts" will alter the outcome of proceedings is untenable. <u>Privilege</u> Further and in any event, the meeting post-dated termination of the Project, and CMEC's purported termination of the EPC Contracts. Its sole purpose was to discuss possible settlement of the dispute between CMEC and Alutrint. Any substantive documents pertaining to T&T's consideration of that meeting would self-evidently be documents created for the purpose of settlement discussions and therefore privileged, as described in T&T's Preliminary Remarks. <u>Burden</u> The burden sought to be placed on T&T is disproportionate. Seeking such a broad category ("evidencing and reflecting") for

	this trivial matter is oppressive. Locating documents speaking to the attempts made to reschedule a meeting, years ago, would be a time consuming and costly exercise with very little if any tangible impact on the proceedings.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. The clarification provided in Request No. 73 (Section A) in relation to the intended scope of "recording" or "reflecting" also applies <i>mutatis mutandis</i>. 3. CMEC addresses the State's three objections in turn below. <i>Relevance and Materiality</i> 4. The Respondent's response misses the point. The essence of this request lies not in the details of the scheduling documents, but in whether there were any scheduling attempts at all as the State represented to CMEC at the time (the absence of such documents will suggest a systematic strategy of delay and an abuse of the trust and confidence CMEC had placed in the State: Memorial, ¶¶ 646, 657). <i>Privilege</i> 5. The claim of without prejudice privilege is untenable. 6. First, CMEC requests documents that evidence whether the State took steps to reconvene the meeting as it repeatedly represented; it is not a request for "<i>substantive documents pertaining to T&T's consideration of that meeting</i>". 7. Second, if the scheduling efforts (or the decision not to schedule despite contrary representation to CMEC) were reflected in some "<i>substantive documents</i>", it is implausible that "<i>substantive documents</i>" were created "<i>for the purpose of settlement negotiations</i>", given that the State decided not to reconvene and avoided the negotiations. Without prejudice privilege does not shield documents for the purpose or recording decisions not to negotiate. 8. More fundamentally, CMEC repeats its Overall Replies, ¶¶ 73-76 regarding why without prejudice privilege generally does not arise or will not prevent the production of documents in this case. <i>Burden</i> 9. This request is narrow and targeted – it is a focused inquiry into a specific issue. As clarified, the phrase "<i>evidencing or</i>

	<i>reflecting</i>" is targeted at documents that directly record, evidence, or otherwise capture the information requested. 10. The Respondent's contention that "[l]ocating documents speaking to the attempts made to reschedule a meeting, years ago, would be a time consuming and costly exercise" appears exaggerated and unsubstantiated. a. <u>First</u>, the relevant time period is fairly recent. The search can reasonably be focused on specific points in time, particularly in the weeks following Finance Minister Colm Imbert's repeated assurances of the plan to reconvene the meeting (February 2020, June 2020, and July 2021 – see Section B, ¶¶ 3, 5) . b. <u>Second</u>, given that the meeting was to be held between CMEC and Minister Imbert, the search is expected to be limited to a small number of custodians, such as Mr Colm Imbert (Colm.Imbert@gov.tt) and/or his secretary at the time, Ms Sandra Spence (Sandra.Spence@gov.tt). As evidenced by contemporaneous correspondence (<i>see, e.g.</i>, C-0469, pp. 1-2; C-0472, p. 1), Ms Spence assisted with and managed Minister Imbert's schedule and appointments. 11. Further, CMEC notes that this document request has become necessary not least because the Respondent has chosen not to submit a witness statement from Mr Imbert – despite his central role in dealing with CMEC's claim, as highlighted in Memorial, Annex 5, p. 1. In the absence of such testimony, CMEC has no alternative but to seek documentary evidence that sheds light on the State's actual conduct and motive at the time. 12. In any event, the probative value of the requested documents (given their relevance and materiality as explained in Section B, ¶¶ 8-9 above) clearly outweighs the alleged burden, particularly in a case of this magnitude.
E. Decision of the Tribunal	The request is denied on the basis it is overly broad and insufficiently relevant or material to the issues in dispute.

Document Request No	79
A. Documents or category of documents requested	Documents evidencing or reflecting NEC's taking over of the Alutrint site in Union Estate, La Brea in or around September 2014 [Memorial, ¶ 385 and fn. 748] (including the circumstances of the taking-over and the structures and materials then remaining on the site). Responsive documents may take the form of, by way of example only, a draft handover letter, takeover report, or other internal or external records documenting the event. <u>CMEC 12/09/2025</u>: CMEC confirms and clarifies that this request does not seek documents regarding costs incurred by CMEC in the Phase II demobilisation. Without prejudice to the propriety of the original request, CMEC proposes the following refined formulation to put this beyond doubt: Documents evidencing or reflecting <u>the circumstances of</u> NEC's taking over of the Alutrint site in Union Estate, La Brea in or around September 2014 [Memorial, ¶ 385 and fn. 748], ~~(including~~ <u>more specifically: the circumstances of</u> <u>whether CMEC was given prior notice of</u> the taking-over; ~~and~~ <u>whether the taking-over was forcible;</u> <u>whether any of</u> the structures and materials <u>were</u> then remaining on the site); ~~and~~ <u>whether CMEC was given an opportunity to recover or dispose of the remaining structures and materials.</u>
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Documents establishing the timing of the NEC's taking over will also establish the end point of CMEC's demobilisation activities. 2. LM WS, ¶ 117 contends that Alutrint did not cause any delay in CMEC's demobilisation. Yet, by the time the NEC took over the Alutrint site, more than 2.5 years had passed since Alutrint's initial Notice to Demobilise dated 23 January 2012 [C-0031]. 3. Furthermore, documents establishing the circumstances of the NEC's taking over will demonstrate that it occurred without prior notice to, let alone consent from, CMEC, at a

	time when the Phase II demobilisation was still continuing (and related payment unsettled). 4. The unilateral and forcible taking over by the NEC – prior to the settlement of CMEC's demobilisation and other payment – was unrelated to any public purpose, there being no emergency at the time (<i>see</i> Counter-Memorial, ¶ 537). 5. The requested documents will therefore form part of the broader factual matrix against which the State's conduct must be assessed, particularly in determining whether CMEC was treated fairly and equitably in accordance with the international law and Treaty standards.
C. Responses and/or objections to document request	Not agreed. CMEC's request refers to ¶ 117 of Mr Mayers' statement. This paragraph is a direct response to ¶ 59 of Qingchi Wang's statement, which reads: <i>On 17 May 2013, in order not to hold up the claim submission to Alutrint, CMEC included the estimated US \$750,000 Phase II demobilisation costs in its consolidated statement of claim. However, due to the challenges involved in locating documents substantiating CMEC's demobilisation costs and sales income, we have chosen to take a practical and proportional approach by not pursuing this head of claim, despite the actual losses suffered by CMEC</i> [Emphasis added]." CMEC has explicitly stated that it is not pursuing a claim for the Phase II costs because it cannot readily find its own documents, and it is not "<i>practical [or] proportionate</i>" to do so. Documents relating to a head of claim that is not pursued are obviously not material to the outcome of the case. CMEC clearly knows that: in its own request, the best it is able to say of these documents is that they will "<i>form part of the broader factual matrix against which the State's conduct must be assessed.</i>" That is evidently some way short of materiality to the outcome. T&T's Preliminary Remarks refer. To circumvent its own exclusion of the point from its claim, CMEC now tries to frame the question of Phase II demobilisation as (tangentially) related to some treaty breach allegations. Conspicuous by its absence from this request is any reference to a corresponding paragraph in the Memorial to this effect. The selective reference to ¶ 537 in the Counter-Memorial, which concerns just a facet of a discussion of an authority (<i>see</i> ¶¶ 526-538), is hopeless. It is impossible for documents pertaining thereto to be material to the outcome of the case. As noted above, ¶ 117 of Mr Mayer's statement, to which CMEC refers in its request, is a direct response to ¶ 59 of Mr Qingchi Wang's statement. CMEC conspicuously fails to include the reference to

	Mr Wang’s statement in its request, presumably to avoid drawing attention to its explicit confirmation that this factual issue is not part of, let alone material to, CMEC’s claim. In fact, CMEC’s Memorial has only this to say on the NEC’s takeover of the site [¶385]: <i>“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. 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, the demobilisation continued until September 2014 when NEC took over the site.”</i> The Memorial then moves on to another matter. The first time that there is any allegation related to <i>“unilateral and forcible taking over [of the site] by the NEC”</i> is in the request for document production. This point is made against the background that CMEC accepts that either it or Alutrint had effectively terminated the EPC Contracts already by that time. The parties’ requests for documents are not an opportunity to supplement its pleadings (despite CMEC’s extensive attempts to do so). This is no more than CMEC trying to justify a request which is, at best, a mere fishing expedition, and at worst, designed purely to create work for T&T. It is made on a disingenuous basis and is wholly meretricious. Finally, in Mr Wang’s statement, CMEC states that it would be disproportionate and impractical for it to find and adduce evidence of its alleged harm and loss in relation to Phase II demobilisation. It then asks GORTT to search for “documents” (of no defined class or origin) going to the same issue, having belatedly reframed it as relevant to other issues. In other words, CMEC is not prepared to do the work of proving this aspect of its claim - and therefore chooses not to pursue it - but requests a broad and sweeping search from T&T related to the same factual issue. That is self-evidently improper. The inconsistency between CMEC’s own decision not to search for documents and its request that T&T does so cannot be reconciled with the requirement to make the request in good faith.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. The Respondent's objection is based solely on an alleged lack of relevance and materiality, to which CMEC responds below.

	3. <u>First</u>, as is made clear in Section B – and by the grouping of this request under "<i>State dealings with CMEC: Assessment of good faith, transparency, etc.</i>" (see Index, page vii) – this is not a quantum-based request. 4. This is further evident from the framing of the request itself – which seeks documents evidencing or reflecting the <i>circumstances</i> of the NEC's taking-over of the Alutrint site in or around September 2014 – rather than documents evidencing or reflecting the Phase II demobilisation costs incurred (and claimable) by CMEC. 5. The Respondent's lengthy objection based on CMEC having decided not to pursue the Phase II demobilisation costs as part of its damages claim is therefore misplaced and unnecessary. 6. Nonetheless, hypothetically, if the responsive documents do contain information that helps establish the Phase II demobilisation costs, as a matter of principle and fairness, it is difficult to see why CMEC should be precluded from relying on such information to enhance its quantum case. Notably, at no point has the State denied that CMEC incurred costs during the Phase II demobilisation process, which lasted for over a year – from July 2013 to September 2014 [Memorial, ¶ 385]. 7. <u>Second</u>, this request is made because the Respondent itself has put the matter in issue in the Counter-Memorial. At ¶ 537, the Respondent accepted that the following conduct constituted an expropriatory conduct: "<i>the occupation of City Water's facilities and usurpation of management control were 'unreasonable and arbitrary, unjustified by any public purpose (there being no emergency at the time) and the most obvious display of puissance publique'</i>". 8. This is <i>directly comparable</i> to what happened to CMEC when the Project site was forcibly taken over in September 2014. Hence this request for documents evidencing the circumstances of the takeover, particularly whether it was carried out without notice and without compensation to CMEC. 9. As explained in Section B, this forms part of the broader context of the State's unfair and inequitable treatment of CMEC (alongside the unilateral termination of the Project, the non-payment of contractual sums, and years of delay tactics) – these acts should be considered cumulatively and holistically.
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E. Decision of the Tribunal	The request is granted in part, limited to documents sufficient to show whether (i) CMEC was given prior notice of the taking over; (ii) the taking-over was forcible; (iii) any of the structures and materials were then remaining on the site; and (iv) CMEC was given an opportunity to recover or dispose of the remaining structures and materials.
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Document Request No	80
A. Documents or category of documents requested	Notice of material breach of the Unanimous Shareholders' Agreement served by the MOF on Sural on 10 December 2007 [C-0014, ¶ 94]. <u>CMEC 12/09/2025</u>: The requested document is E1/83 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As mentioned in Request No. 51, ¶ 3, Sural failed to meet an equity call issued on 4 July 2007, leading to the MOF serving a notice of material breach on 10 December 2007 [C-0014, ¶ 94], followed shortly thereafter by Sural's disengagement from the Project at the end of 2007 [C-0014, ¶¶ 96-100]. 2. The ICC Award identified four core pieces of correspondence relating to Sural's disengagement [C-0014, ¶¶ 94-105], which are now requested in this Request No. 80 through Request No. 83. 3. The original letters should be produced, as they are more reliable and probative than summaries or excerpts, and may contain additional relevant details not captured in the ICC Award (particularly given the differing focus between the ICC Proceedings and the present arbitration, insofar as Sural's participation is concerned).
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, these documents.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested document. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	81
A. Documents or category of documents requested	Letter from Sural (Dr Alfredo Riviere) to Prime Minister Patrick Manning dated 28 December 2007 [C-0014, ¶¶ 96-97]. <u>CMEC 12/09/2025</u>: The requested document is E1/89 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. See Request No. 80 above.
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, these documents. .
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested document. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	82
A. Documents or category of documents requested	Letter from Sural (Dr Alfredo Riviere) to Prime Minister Patrick Manning dated 29 March 2008 [C-0014, ¶¶ 102-104]. <u>CMEC 12/09/2025</u>: The requested document is E1/101 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. See Request No. 80 above.
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, these documents.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested document. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	83
A. Documents or category of documents requested	Letter from the MOF to Sural dated 4 April 2008 [C-0014, ¶ 105]. CMEC 12/09/2025: The requested document is E1/102 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. See Request No. 80 above.
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, these documents.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested document. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	84
A. Documents or category of documents requested	The outstanding attachments to the letter from CMEC to Alutrint dated 27 August 2007 with Ref. No. CMECTD-AL-B-MSH0705-030 [C-0141], namely: (2) <i>"break down price list for seismic and phase II"</i> (4) <i>"the letter from Mr. Luo to Alutrint for USD20M mobilization fee in April 2007"</i> To further assist the State's locating of the documents, Attachment (4) more specifically is a letter from CMEC to Alutrint dated 20 April 2007 (as referred to in C-0014, ¶ 84; C-0381, ¶ 130). <u>CMEC 12/09/2025</u>: Attachment (4) (CMEC's 20 April 2007 letter) is E1/48 in the ICC Proceedings.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Alutrint and CMEC began renegotiating the EPC contract price since around August 2007, due to multiple factors including design revisions: Memorial, ¶¶ 173-175. 2. In this 27 August 2007 letter, CMEC requested a price increase of US \$60 million which included a request for US \$11.4 million for change of seismic parameter (from 0.15g to 0.3g) [C-0141, pp. 1, 5]. 3. Attachment (2), which contained a break down price list for seismic, is currently missing from the evidentiary record (as CMEC is unable to locate it). This document should be produced, as it likely contained estimated pricing for the increased engineering works due to the seismic parameter change, which might have formed the basis of further discussions between the parties. 4. CH ER, ¶ 2.2.2.7 disputes the "causation" of additional works arising from the seismic parameter change, asserting that "[i]n my opinion, the seismic design factor and wind loading design factor were both known to CMEC and NEUI from at least January 2005, prior to the formation of the 2005 EPC Contract so there are no changes to the CMEC / NEUI design scope of works". 5. In this regard, as noted in Request No. 52, ¶ 4 above, Alutrint's contemporaneous acknowledgement of any justified or justifiable cost increases linked with design changes would provide probative evidence on both causation and valuation. For this reason, Attachment (2) should be produced and given due regard.

	6. As for Attachment (4), CMEC's repeated requests for – but failure to receive – sufficient mobilisation payments were an important factor contributing to cost increases on the Project. This letter is relevant to understanding that context. Equally if not more importantly, this letter recorded CMEC's request for an extension of the "Time for Completion" – see Request No. 85(1) below.
C. Responses and/or objections to document request	The response to Request 72 refers.
D. Replies to objections and request for resolution	1. By its cross-reference to Request No. 72, CMEC takes note of the State's confirmation that it is in the possession, custody or control of the requested attachments and that it will produce the same. 2. The attachments were included in correspondence sent to Alutrint. This response therefore confirms that the State possesses, or has access to, Alutrint documents.
E. Decision of the Tribunal	The Tribunal understands that the Respondent has agreed to produce all documents responsive to this request, but to the extent the Respondent has not so agreed, the request is granted.

Document Request No	85
A. Documents or category of documents requested	CMEC's requests to Alutrint for an extension of the "Time for Completion" (as defined in the EPC Contracts), including: (1) CMEC's letter to Alutrint dated 20 April 2007, in which CMEC requested an extension of the construction period from 28 months to 34 months [C-0381, ¶ 130; this is the same letter in which CMEC reiterated its request for a US \$20 million mobilisation fee (see Request No. 84)] (2) CMEC's request (raised sometime between April and November 2007) to extend the construction period to 63 months, calculated from June 2005 to September 2010 [C-0381, ¶ 153; this request is recorded in Alutrint Board Paper 2007-05-43 (see Request No. 53)] For the avoidance of doubt, any further or other requests by CMEC for an extension of the Time for Completion should also be produced. To the extent that Alutrint responded to CMEC's requests, Alutrint's responses should also be produced.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. In Memorial, ¶¶ 117-118, CMEC identified a range of factors that caused substantial delays and extensions in the Project. 2. In Counter-Memorial, ¶¶ 103-104, the State asserted that "<i>CMEC never sought such an extension</i>" of the Time for Completion and thus the question of CMEC's entitlement to an extension "<i>does not arise for consideration</i>". 3. This assertion is flatly contradicted by the State's own position in the ICC Proceedings. As recorded in C-0381 (GORTT's Written Opening Submissions), ¶¶ 130, 153, CMEC did request extensions – first to 34 months, and later to 63 months. 4. The original requests from CMEC (likely in the form of letters) and any responses thereto should be produced to provide an accurate evidentiary record. 5. The period and calculation of the Time for Completion may bear upon, <i>inter alia</i>, the overhead costs claimable by CMEC (therefore relevant and material to quantum).
C. Responses and/or objections to document request	The response to Request 72 refers.

D. Replies to objections and request for resolution	1. By its cross-reference to Request No. 72, CMEC takes note of the State's confirmation that it is in the possession, custody or control of the requested documents and that it will produce the same. 2. The documents comprise correspondence between CMEC and Alutrint. This response therefore confirms that the State possesses, or has access to, Alutrint documents.
E. Decision of the Tribunal	The Tribunal understands that the Respondent has agreed to produce all documents responsive to this request, but to the extent the Respondent has not so agreed, the request is granted.

Document Request No	86
A. Documents or category of documents requested	The presentation by the "Government Members of the Board of Directors of Alutrint Limited" to the Standing Committee on Energy (SCE) on 17 December 2007, which provided an update on project economics, schedule, and the reasons for cost overruns and schedule delays.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This presentation is referenced in the letter from Professor Kenneth Julien (Chairman of NGETF) to CMEC dated 20 December 2007 [C-0146], confirming its existence and relevance to the State's contemporaneous understanding of the Project's status. 2. The presentation was made to the SCE (which comprised senior Government officials including the Prime Minister, Finance Minister, and Energy Minister). Given the audience and timing, the presentation is likely to have provided a detailed and authoritative account of the Project's economics, schedule, and the specific causes of cost overruns and delays. 3. The presentation may therefore serve as a key contemporaneous document reflecting the State's internal assessment of the Project's progress and challenges as of late 2007. 4. Particularly relevantly, it is likely to address design modifications already undertaken by that point – such as changes to the infeed voltage and seismic parameter – which are directly relevant to the quantum of CMEC's claims. As noted in Request No. 52, ¶ 4, Alutrint's contemporaneous acknowledgment of justified or justifiable cost increases linked to design changes would provide probative evidence on both causation and valuation.
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, this document.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested document. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	87
A. Documents or category of documents requested	The outstanding attachments to the letter from CMEC to Alutrint dated 3 October 2006 with Ref. No. CMEC-TD-22-DJH061003 [C-109], namely: (1) A statement on the selection of seismic design parameter for Alutrint Aluminum Complex Project by CMEC (2 October 2006) (2) Memorandum of understanding (23 March 2006) (3) Parts of local earthquake report by NEC CMEC has retrieved attachment (4) (Golder's geotechnical investigation data report dated 15 June 2006) and attachment (5) (meeting minutes on the seismic design parameters and foundation design review dated 8 August 2006), which have been respectively submitted as C-0090 and C-0094. Hence CMEC has limited the request to the outstanding attachments (1) to (3).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The production of the outstanding Attachments (1) to (3) will provide essential contemporaneous context for understanding CMEC's initial adoption of PGA 0.15g and/or its subsequent update to PGA 0.3g as the seismic design parameter for the Project. 2. These documents are likely to contain CMEC's technical rationale, supporting data, and third-party inputs (e.g. NEC's earthquake report), which informed its design decisions. 3. They are therefore relevant and material to CMEC's claim for additional engineering works arising from the change of seismic design parameter.
C. Responses and/or objections to document request	The response to Request 72 refers, to the extent that such documents are within T&T's own records.
D. Replies to objections and request for resolution	1. By its cross-reference to Request No. 72 with the added qualifier, the State's response is to the effect that "<i>T&T is aware of the document[s] and in the interest of cooperation will produce [them]</i>", "<i>to the extent that such documents are within T&T's own records</i>". 2. The qualifier is inappropriate and invalid. It contravenes PO1, § 15.2.3 and IBA Rules, Article 3.4, both of which explicitly require that a Party should produce to the other

	Party all requested documents in its possession, custody or control, where no objection is made. 3. As addressed in CMEC's Overall Replies, ¶¶ 38-40 – and confirmed by the State's responses to Requests Nos. 84-85 and 108-110 – the State is in the possession, custody or control of Alutrint documents. Therefore, production should not be limited to documents "<i>within T&T's own records</i>", but must also include those held by or accessible through Alutrint. 4. CMEC reserves its right to request the remaining responsive documents, should the State's production turn out to be incomplete.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the document responsive to this request from Alutrint.

Document Request No	88
A. Documents or category of documents requested	The signed and complete version of C-0134, i.e. CMEC's letter to Alutrint dated 9 August 2007 with Ref. No. CMECTD-AL-B-MSH0708-027, including the attachment thereto. The attachment is the "<i>techno-economic comparison of the two schemes</i>" to deal with the infeed voltage change from 132kV to 220kV.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The requested document is currently incomplete in the evidentiary record. The attachment is missing and has not been located by CMEC. 2. The attachment – containing CMEC's comparative technical and economic assessment of two technical solutions in response to the infeed voltage change – will provide the necessary context for understanding the engineering implications and cost adjustments arising from the change in infeed voltage from 132kV to 220kV.
C. Responses and/or objections to document request	The response to Request 87 refers.
D. Replies to objections and request for resolution	1. CMEC repeats the replies stated in Request No. 87.
E. Decision of the Tribunal	The request is granted. The Respondent is ordered to exercise best endeavours to obtain the document responsive to this request from Alutrint.

Document Request No	89
A. Documents or category of documents requested	To the extent not yet submitted into evidentiary record, any upstream drawings and other engineering deliverables received from CMEC/NEUI/THEIDI. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, and in the interest of facilitating efficient production, CMEC clarifies that it does not request the State to distinguish between engineering deliverables that have already been submitted into the evidentiary record and those that have not. CMEC is prepared to accept the transfer of all upstream drawings and other engineering deliverables in the State's possession, custody, or control. CMEC will deploy its own resources to identify any new or additional materials not yet on the record. For the avoidance of doubt, this clarification / flexibility is offered on the expectation that the State will act in good faith and not intentionally "re-produce" documents already submitted by CMEC (whether for the purpose of obstructing or complicating CMEC's review process, or otherwise).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. Alutrint was fully aware of the unpaid fees for upstream engineering services – in the October 2011 exit report of then-outgoing Alutrint Acting CEO Mr Philip Julien, he noted: <i>"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."</i> [C-0300, p. 4] 2. CMEC requests the production of all remaining upstream drawings and engineering deliverables submitted by CMEC and/or its design subcontractors, which are expected to fall within the 2005–2007 timeframe. 3. The requested documents are material to a fair and accurate assessment of the value of engineering works performed in connection with the upstream facilities under the 2005 EPC Contract.
C. Responses and/or objections to document request	T&T objects to this request for the reasons set out in ¶¶ 44-47 of its Preliminary Remarks. While T&T has agreed to search for certain clearly-defined documents which ought to be in CMEC's possession, this request is far too broad, unspecific and speculative. It amounts to a request that T&T undertake a large review of very old records – almost certainly in hard copy – to cure CMEC's own failure to find and adduce <u>its own documents</u>. That is plainly unduly burdensome for T&T.

D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. The Respondent's objection is based solely on the ground that the requested documents ought to be in CMEC's possession, custody, or control. 3. CMEC repeats its Overall Replies, ¶¶ 43-47, which outline the extensive and diligent searches it has conducted across files kept or accessible to it. This is evidenced by the substantial volume of documents – particularly engineering deliverables – already submitted by CMEC. 4. In the circumstances, there is no reason to doubt CMEC's good faith representation that it has submitted the upstream drawings and other engineering deliverables it was able to retrieve with its Memorial (which are compiled within [DC-0015]). However, CMEC reasonably believes that these do not represent the full scope of the upstream deliverables previously completed and submitted by CMEC (and/or its design subcontractors). 5. Notably, the State does not deny the relevance or materiality of the requested documents, nor does it claim to be unaware of the existence of further deliverables. The objection is purely procedural. 6. <u>It would be entirely unfair – and contrary to the principle of good faith – for the State to withhold relevant documents in its possession, custody, or control on the basis of alleged burden, particularly where the documents are of clear probative value and directly relevant and material to a fair determination of the dispute.</u> The document production mechanism is designed exactly to enable a party to obtain documents that may strengthen its case (and/or weaken the case of its opponent). 7. In this regard, the State's purported burden argument – i.e. the records are "<i>almost certainly in hard copy</i>" – is <u>inconsistent</u> with the nature of the documents requested. Engineering drawings and deliverables are (and were at the time of the Project) generally created, submitted, and stored in electronic format. The suggestion of the need for a hard copy review reflects a mechanical and unsubstantiated approach to resisting disclosure. 8. Furthermore, it is relevant to note that the State (including through Alutrint and/or NEC) may have already compiled – or even reused – CMEC's submitted engineering works when it re-contracted the upstream facilities to another US
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	contractor. The similarities between the two contractors' designs can be seen in Memorial, Annex 1, p. 5. 9. For the avoidance of doubt, given the State's repeated (and unmeritorious) allegation of no access to Alutrint documents in numerous other requests, CMEC emphasises that the scope of production for this request should cover all responsive documents in the State's possession, custody or control, including those accessible through Alutrint and NEC (as applicable).
E. Decision of the Tribunal	The request as refined is granted.

Document Request No	90
A. Documents or category of documents requested	All correspondence and technical materials (including e.g. site condition documents, design basis documents) exchanged between Alutrint and CMEC addressing, touching upon or impacting the seismic design parameter. For the avoidance of doubt, this request excludes documents already submitted by CMEC as evidence. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: All correspondence and technical materials (including e.g. site condition documents, design basis documents) exchanged between Alutrint and CMEC addressing, ~~touching upon~~ or impacting the seismic design parameter. For the avoidance of doubt, this request excludes documents already submitted by CMEC as evidence. <u>Notwithstanding the foregoing, if more convenient for the State, this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not.</u> CMEC is prepared to accept the transfer of all requested correspondence and technical materials in the State's possession, custody, or control. CMEC will deploy its own resources to identify any new or additional materials not yet on the record. This is on the expectation that the State will act in good faith and not intentionally "re-produce" documents already submitted by CMEC. (The more detailed note in Request No. 89 applies <i>mutatis mutandis</i>.)
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The seismic design parameter and wind speed parameter are two of the main design revisions disputed by the Respondent-appointed engineering expert. In particular, Mr Chris Hillier opines [CH ER, ¶ 2.2.2.7]: <i>"In my opinion, the seismic design factor and wind loading design factor were both known to CMEC and NEUI from at least January 2005, prior to the formation of the 2005 EPC Contract so there are no changes to the CMEC / NEUI design scope of works."</i>

	2. This request seeks to establish a complete and accurate evidentiary record of the communications and technical exchanges between CMEC and Alutrint concerning these parameters. Such documents are material to enabling a proper expert assessment of CMEC's design decisions and the causative factors underlying the scope and cost of the engineering works. 3. The requested materials are expected to include, among other things, design basis documents, technical correspondence, and site-specific inputs.
C. Responses and/or objections to document request	Not agreed. The response to Request 89 refers. This request seeks to create even more work for T&T, as it also requires T&T to check any documents it finds against the hundreds of exhibits adduced by CMEC. Further, documents “touching upon” one specific part of the Project’s design aspects cannot possibly be anticipated to be material to the proceedings. CMEC is simply asking T&T to cure defects in its own evidential records, so that it can subsequently review those documents for anything which is <u>actually</u> relevant and material. This imposes an undue burden for T&T to bear. The Respondent further relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint’s documents are not the Respondent’s documents. There are real and genuine concerns, legal and practical, about these requests.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined and clarified above) and submits it for the Tribunal's resolution. 2. <u>First</u>, in relation to CMEC's (lack of) possession, custody or control of the requested documents, CMEC repeats Overall Replies, ¶¶ 43-47 and its replies in Request No. 89 (including particularly the observations at ¶¶ 3-6, which apply <i>mutatis mutandis</i>). 3. <u>Second</u>, in relation to the State's possession, custody or control of the requested (Alutrint) documents, CMEC repeats Overall Replies, ¶¶ 38-40. 4. <u>Third</u>, in light of the Respondent's comments and in the interest of facilitating efficient production, CMEC offers the following clarifications, as marked up in Section A: a. CMEC is prepared to offer the flexibility for the State to produce all responsive documents in its possession, custody or control without cross-checking against the

	existing evidentiary record (for the avoidance of doubt, CMEC originally included the carve-out for existing exhibits in order not to request documents it already has, thereby reducing the burden for the State); and b. CMEC is prepared to accept the deletion of "<i>touching upon</i>". It is noted that the State has no objection to "<i>addressing</i>" or "<i>impacting</i>", which it accepts as capturing documents that are "<i>actually relevant and material</i>".
E. Decision of the Tribunal	The request as refined is granted.

Document Request No	91
A. Documents or category of documents requested	All correspondence and technical materials (including e.g. site condition documents, design basis documents) exchanged between Alutrint and CMEC addressing, touching upon or impacting the wind speed parameter. For the avoidance of doubt, this request excludes documents already submitted by CMEC as evidence. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC proposes the following refined formulation: All correspondence and technical materials (including e.g. site condition documents, design basis documents) exchanged between Alutrint and CMEC addressing, ~~touching upon~~ or impacting the wind speed parameter. For the avoidance of doubt, this request excludes documents already submitted by CMEC as evidence. <u>Notwithstanding the foregoing, if more convenient for the State, this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not.</u> CMEC is prepared to accept the transfer of all requested correspondence and technical materials in the State's possession, custody, or control. CMEC will deploy its own resources to identify any new or additional materials not yet on the record. This is on the expectation that the State will act in good faith and not intentionally "re-produce" documents already submitted by CMEC. (The more detailed note in Request No. 89 applies <i>mutatis mutandis</i>.)
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 90, ¶¶ 1-3.
C. Responses and/or objections to document request	The objection to Request 90 refers.

D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined and clarified above) and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Request No. 90.
E. Decision of the Tribunal	The request as refined is granted.

Document Request No	92
A. Documents or category of documents requested	Documents recording or reflecting the scope, progress and status of the works carried out for the TWC and temporary facilities for the Project (excluding those already submitted by CMEC as evidence). To assist the State in locating relevant documents, documents CMEC reasonably believes to contain such information include (but are not necessarily limited to) weekly site progress meeting minutes prepared by or on behalf of Alutrint (Weekly Site Minutes) between December 2008 and June 2010. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that: (i) CMEC is prepared to accept the Weekly Site Minutes in the specified period in satisfaction of this request; and (ii) this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not (see note in Request No. 89 which applies <i>mutatis mutandis</i>).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC claims US \$4,056,001 for works carried out in relation to the TWC and temporary facilities for the Project [MT ER, App. 1.4, ¶ 1.3.2]. 2. In support of this claim, Mr Michael Tonkin reviewed documents including the bill of quantities, general layout drawing, marked-up drawings, and photographs of the constructed temporary facilities, thereby reaching his assessment of CMEC's value claim based on the revised quantities and the unit rates [MT ER, App. 1.4, ¶¶ 1.2.15-1.2.18, 1.3.2]. 3. In contrast, in support of the State's position, Mr Tim Tapper assesses CMEC's claim for TWC and temporary facilities to be: (i) TT1a: US \$ nil; (ii) TT1b: US \$ nil; or (iii) TT2: US \$3,926,439.60 [TT ER, ¶¶ 104, 118, 127]. 4. In making his assessment, Mr Tim Tapper notes the absence of contemporaneous evidence substantiating CMEC's claim, including documents demonstrating the progress and status of the works, such as site progress and inspection reports [TT ER, ¶ 101]. This evidentiary gap contributed to his significantly lower assessment compared to CMEC's claim [TT ER, ¶¶ 103, 109, 128].

	5. Given this divergence, it is both relevant and material to produce documents that record or reflect the scope, progress, and status of the works carried out for the TWC and temporary facilities. Such documents may help fill the evidentiary gap explicitly identified by Mr Tim Tapper and, in turn, substantiate CMEC's claim. 6. Additionally, under Mr Tapper's TT1b assessment, he raised the possibility of duplication between CMEC's claim for TWC and temporary facilities and its claim for Dynamic Compaction Works, which led him to reduce his assessment from a provisional US \$2,809,012.81 to US \$ nil. 7. CMEC's preliminary response (subject to further updates and/or elaboration in subsequent submissions) is that this assertion is unsubstantiated, as the TWC and temporary facilities (part of the Main Works) and the Dynamic Compaction Works are distinct in both scope and nature. 8. CMEC's position on this distinction will by no means be unfamiliar to Mr Tim Tapper, who expressly includes a caveat that his assessment of US \$ nil is subject to reconsideration should evidence emerge demonstrating no duplication, such as documents reflecting the actual amount of completed works and the specific scope of work performed [TT ER, ¶¶ 117-119]. 9. The above thus further strengthens the relevance and materiality of producing documents that record or reflect the scope, progress, and status of the works carried out for the TWC and temporary facilities. Such documents may help clarify whether any duplication exists between these works and the Dynamic Compaction Works. 10. These documents are readily identifiable and narrowly scoped, as CMEC's request is limited to a specific timeframe and topic.
C. Responses and/or objections to document request	The objection to Requests 89 and 90 (first substantive paragraph) refer. In respect of Alutrint documents, the Respondent relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint's documents are not the Respondent's documents. There are real and genuine concerns, legal and practical, about these requests. CMEC evidently ought, in any event, to have its own documents showing the progress it made (and has already adduced some). Further, this request is not for a narrow or specific category of documents; it is couched in exceptionally broad terms. Even if narrowed to specifically seek the Weekly Site Minutes (as it should have been), CMEC does not explain why T&T should have these documents, or the lengths to which CMEC has gone

	to find them in its own records. Searching for documents across an 18-month period ending more than 15 years ago is no small undertaking and it is an excessive burden for T&T to do so in order to provide CMEC with evidence of the work that <u>CMEC itself allegedly performed</u>. This is tantamount to imposing a burden on T&T to prove CMEC's quantum when the burden is squarely on CMEC to do so.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. Insofar as the Respondent relies on its objections in Requests Nos. 89 and 90 (first substantive paragraph), CMEC's refer to its replies in Request No. 89, ¶¶ 2-6 and Request No. 90, ¶ 4(a) (as also reflected in clarification (ii) in Section A above). Those replies apply <i>mutatis mutandis</i>. 3. As for the points repetitively raised on the question of possession, custody or control: a. with respect to Alutrint's documents, the State clearly has possession, custody or control – see Overall Replies, ¶¶ 38-40; and b. with respect to CMEC's search and its own records, CMEC repeats Overall Replies, ¶¶ 43-47, which demonstrate the extensive and diligent searches it has undertaken. As the Respondent itself notes, CMEC has already submitted some documents (partly) evidencing the progress of the temporary works, to the extent available to it. In the circumstances, there is no reason to doubt CMEC's good faith representation that the requested documents are not presently in its possession, custody, or control. The observations in Request No. 89, ¶¶ 3-4 apply <i>mutatis mutandis</i>. 4. In the interest of facilitating efficient production, CMEC is prepared to accept Alutrint's Weekly Site Minutes in the specified period in satisfaction of this request. CMEC notes that these minutes were likely centrally maintained or archived; alternatively, given that the meetings were held regularly every Monday and sequentially numbered (<i>see, e.g., C-0639 and C-0640</i>), retrieval should be relatively straightforward. 5. Turning to the Respondent's argument that the requested production is "<i>tantamount to</i>" a shifting of the burden of proof, it is misconceived. The burden remains on CMEC to prove its damages – hence the making of this request, which seeks supplementary documents to support and complete

	CMEC's case. This is a well-accepted function of document production in international arbitration. 6. Most importantly, <u>it would be entirely unfair – and contrary to the principle of good faith – for the State to simultaneously criticise alleged evidentiary gaps in CMEC's existing evidence</u> (see Section B, ¶¶ 4, 6), <u>while withholding relevant documents in its possession, custody, or control on the basis of alleged burden. This is especially so where the documents are clearly probative and directly relevant and material to the quantification exercise.</u> 7. This is telling from the fact that, among the Respondent's numerous (and unsustainable) objections, it did not even attempt to argue lack of relevance or materiality.
E. Decision of the Tribunal	The request as refined is granted.

Document Request No	93
A. Documents or category of documents requested	Documents recording or reflecting the discussions, planning and other activities related to the subject matter of the training of operational and maintenance staff for the Project (Training), or any Training-related materials created or used, during Alutrint's visit to China in or around November 2009 (excluding those already submitted by CMEC as evidence). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not (see note in Request No. 89 which applies <i>mutatis mutandis</i>).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC claims US \$105,000 for the cost of progressing Training, relying upon the assessment of Mr Michael Tonkin [MT ER, App. 1.5, ¶ 1.3.2]. 2. In support of this claim, Mr Michael Tonkin reviewed Training-related documents prepared by CMEC and referenced a meeting held with Alutrint in November 2009, thereby reaching his assessment of CMEC's costs based on the estimates of staff time spent for Training preparation [MT ER, App. 1.5, ¶¶ 1.2.14-1.2.18]. 3. However, in support of the State's position, Mr Tim Tapper assesses CMEC's Training-related costs to be: (i) TT1a: US \$ nil; (ii) TT1b: US \$1,560; or (iii) TT2: US \$105,000 [TT ER, ¶¶ 143, 149, 153]. This is mostly due to Mr Tim Tapper's view that CMEC failed to provide sufficient supporting evidence. Specifically, a. TT1a: No evidence of an agreed training plan between the Parties or proof that CMEC actually incurred any costs in this regard [TT ER, ¶ 142]. b. TT2: No verifiable evidence supporting work done or actual costs incurred by CMEC [TT ER, ¶ 153]. 4. This is despite the fact that Mr Leroy Mayers acknowledges that Alutrint received a draft preliminary training proposal from CMEC, and that Alutrint arranged a team to visit CMEC to discuss training matters [LM WS, ¶ 113]. 5. In light of the above, it is both relevant and material to produce documents that record or reflect Alutrint's visit to China in or around November 2009 discussing or touching upon matters of Training. Such documents may contain

	information which may shed light on, <i>inter alia</i>, the following matters: a. the scope and extent of the work done by CMEC in relation to Training; b. progress updates or deliverables related to Training; and c. time and costs incurred by CMEC for progressing Training-related matters. 6. Accordingly, these documents may provide further substantiation for CMEC's Training claim, particularly in response to Mr Tim Tapper's challenges regarding the sufficiency of CMEC's current supporting evidence. 7. These documents are readily identifiable and narrowly scoped, as CMEC's request is limited to a specific timeframe and topic.
C. Responses and/or objections to document request	The objection to Request 92 refers.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 92 apply <i>mutatis mutandis</i>.
E. Decision of the Tribunal	The request as refined is granted. The Respondent is ordered to exercise best endeavours to obtain the Alutrint documents responsive to this request.

Document Request No	94
A. Documents or category of documents requested	Training-related deliverables (such as draft proposals and plans) and associated documents submitted to Alutrint from February 2009 to December 2009 (excluding those already submitted by CMEC as evidence, as well as any documents produced under Request No. 93). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not (see note in Request No. 89 which applies <i>mutatis mutandis</i>).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The rationale underlying Request No. 93 applies equally here, with added emphasis on Mr Leroy Mayers' acknowledgment that Alutrint did receive a draft preliminary training proposal from CMEC in March 2009 [LM WS, ¶ 113]. This corroborates the contemporaneous context in which the Parties were engaged in a process whereby CMEC was providing Training-related materials to Alutrint. 2. These requested documents are relevant and material to substantiating CMEC's Training claim of US \$105,000, particularly in response to Mr Tim Tapper's challenges regarding the sufficiency of CMEC's current supporting evidence.
C. Responses and/or objections to document request	The objection to Request 92 refers.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. CMEC's replies in Request No. 92 apply <i>mutatis mutandis</i>.
E. Decision of the Tribunal	The request as refined is granted. The Respondent is ordered to exercise best endeavours to obtain the Alutrint documents responsive to this request.

Document Request No	95
A. Documents or category of documents requested	Documents recording or reflecting the number of CMEC personnel – including their basic personal details such as names and respective capacities (e.g. construction personnel, CMEC management team, and/or CMIIC management team) – physically present on the Project site between December 2008 and March 2009 (excluding those documents already submitted by CMEC as evidence). To assist the State in locating relevant documents, documents CMEC reasonably believes to contain such information include (but are not necessarily limited to): (1) Weekly Site Minutes, which contained sections such as "Manpower" or "Security" addressing manpower arrangements and security details concerning personnel access to the Project site (for examples, see C-0639 and C-0640). (2) Access records maintained by or on behalf of Alutrint documenting CMEC personnel's entry to the Project site, including those that recorded or reflected the CMEC personnel who underwent drug tests and/or attended safety orientation sessions upon their entry to the Project site. (3) Alutrint's monthly Financial Reports, which contained a section titled "Communications, Community, Public and Government Affairs" that recorded how many Chinese workers were on the site each month (for examples, see C-0322 and C-0360). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that: (i) CMEC is prepared to accept production of any one of the three sources identified above, <i>provided</i> it contains the most comprehensive information responsive to this request among the three. CMEC does <u>not</u> seek duplicative production of all sources; and (ii) this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not (see note in Request No. 89 which applies <i>mutatis mutandis</i>).
B. Relevance and materiality according to the requesting party (including references to	1. CMEC claims US \$638,544.12 for the cost of dispatching 77 construction personnel from China to Trinidad and Tobago,

pleadings, exhibits, witness statements or expert reports)	relying upon the assessment of Mr Michael Tonkin [MT ER, App. 1.9, ¶ 1.3.1]. 2. However, in support of the State's position, Mr Tim Tapper assesses CMEC's personnel dispatch costs to be: (i) TT1a: US \$ nil; (ii) TT1b: US \$ nil; or (iii) TT2: US \$ nil [TT ER, ¶¶ 211, 213, 222]. 3. At the outset, Mr Tim Tapper's assessment is primarily based on his view that the personnel dispatch costs are duplicated with Site Overheads [TT ER, ¶¶ 209, 213, 222], which appears to rely solely on the identification of "<i>some duplication from the data entries with personnel names shown</i>", referring to only five duplicated personnel names [TT ER, ¶¶ 487-488]. 4. CMEC's preliminary response (subject to further updates and/or elaboration in subsequent submissions) is that this assertion by the State is unsubstantiated. a. Mr Tim Tapper bases his allegation on some potentially duplicated items (e.g. air tickets, visas, insurance) recorded in CMIIC's claim / settlement report [TT ER, ¶ 486], which contains the comprehensive records provided by the subcontractor, including summaries and breakdowns of CMIIC's payments received, site expenditures, and supporting documents [MT ER, App. 9, ¶ 1.2.38]. b. To the extent that Mr Michael Tonkin assesses CMIIC's claim / settlement report in relation to CMEC's Site Overheads claim, he was referencing "<i>the data entries related to site overhead costs incurred by the subcontractor</i>" [MT ER, App. 9, ¶ 1.2.39], most relevantly including cost items concerning the CMIIC management team. c. By contrast, the personnel dispatch costs claimed by CMEC relate exclusively to the 77 construction personnel deployed for the construction of the TWC and temporary facilities. These costs are distinct from any cost items associated with the CMIIC management team. This has been explained by Mr Michael Tonkin in his report, i.e. Site Overheads refer to "<i>resources that are not directly related to the specific construction activities but are necessary to support the overall project [...]</i>" [MT ER, App. 9, ¶ 1.2.3]. d. In such context, Mr Michael Tonkin's reliance on CMIIC's claim / settlement report for CMEC's Site
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	Overheads claim is, by nature, separate and distinct from CMEC's personnel dispatch costs. e. This distinction reflects CMEC's position that these costs are separate and not duplicative, contrary to the State's assertion. 5. Given the directly conflicting positions of the Parties, it is both relevant and material to produce documents that record or reflect the actual presence and capacity of CMEC personnel on site during the relevant period. In particular, documents confirming the presence of the 77 construction personnel, whose deployment is distinct from that of the CMIIC management team, are especially relevant and material. Such records are critical because they may demonstrate the absence of any duplication between the personnel dispatch costs and the Site Overheads. 6. Furthermore, under Mr Tim Tapper's TT2 assessment of the personnel dispatch costs, he observes that certain evidence substantiating CMEC's claim has not been provided. Specifically, he notes the absence of the following categories of documents [TT ER, ¶ 221]: a. <i>"physical evidence that the individuals arrived on site within the periods [...]"</i>; and b. records <i>"to verify any activity on site for the individuals"</i>. 7. This indicates that such records have been expressly identified by Mr Tim Tapper as relevant to the assessment of CMEC's personnel dispatch costs, beyond his allegation of duplication with Site Overheads. 8. Accordingly, it is both relevant and material to produce documents that record or reflect the entry of CMEC personnel to the Project site. Indeed, Mr Qingchi Wang has already emphasised the availability of such evidence to Alutrint and the State (QW WS, ¶ 38: <i>"I believe that Alutrint should have records of the individuals who were granted access to the site, as anyone intending to work on-site must first obtain permission from the Alutrint site office"</i>). They would directly substantiate CMEC's claim of US \$638,544.12 for personnel dispatch costs, and address the evidentiary gap identified by Mr Tim Tapper. 9. These documents are readily identifiable and narrowly scoped, as CMEC's request is limited to a specific timeframe and specific categories of records.
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C. Responses and/or objections to document request	The objection to Request 92 refers. It is unreasonable for CMEC to request that T&T undertake a wide search for documents to illustrate when CMEC's staff were on the site of a Project run by CMEC for Alutrint. It is inconsistent (at best) for CMEC to say that the documents are "<i>readily identifiable and narrowly scoped</i>" – CMEC identifies three completely different categories of document which CMEC believes <u>may</u> contain such information, but notes that the responsive documents are "<i>not necessarily limited to</i>" those categories. CMEC's request is therefore nakedly asking T&T to search high and wide for any possible source of this information to support its quantum case. Paragraph 9 of section B of the request is irreconcilable with its actual content. The Respondent repeats that the contract was between CMEC and Alutrint. The Respondent was not on site, and does not have access to these sorts of data.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. Insofar as the Respondent relies on its objections in Request No. 92, CMEC's replies in Request No. 92 apply <i>mutatis mutandis</i>. 3. As regards the continued allegation of no access to Alutrint documents, CMEC repeats its Overall Replies, ¶¶ 38-40. 4. As regards the objection around the identification of three different types of source documents: a. In the spirit of offering assistance to the State (without limiting its option to retrieve and produce other responsive documents if more readily available), CMEC has identified three categories of documents that it reasonably believes contain the relevant information. This is also why CMEC stated that the responsive documents are "<i>not necessarily limited to</i>" these identified sources. <u>Their production is intended to be alternative</u> (depending on which source contains the most comprehensive information as requested), <u>not duplicative</u>. b. CMEC has now made this position explicitly clear through clarification (i) in Section A above. 5. Relatedly, CMEC notes that it can be stated with reasonable certainty that each of the three identified sources <i>will</i> (not just <i>may</i>) contain the responsive information. Type (1) and Type (3) are evidenced by the personnel-related sections in the copies already submitted into evidence; Type (2) is supported by the nature of the documents and corroborated by the witness statement of Mr Qingchi Wang [QW WS, ¶ 38]. All

	of them are, as noted in Section B, "<i>readily identifiable and narrowly scoped</i>". 6. As emphasised in Request No. 92, ¶ 6, <u>it would be entirely unfair – and contrary to the principle of good faith – for the State to simultaneously criticise alleged evidentiary gaps in CMEC's existing evidence</u> (see Section B, ¶¶ 2, 6), <u>while withholding relevant documents in its possession, custody, or control that are clearly probative and directly relevant and material to the quantification exercise.</u> 7. In this instance, the unfairness is particularly stark, given that the State is in possession of or has access to <i>multiple, readily identifiable (and indeed identified)</i> sources of documents that will provide the very information sought by its own expert.
E. Decision of the Tribunal	The request as refined is granted. The Respondent is ordered to exercise best endeavours to obtain the Alutrint documents responsive to this request.

Document Request No	96
A. Documents or category of documents requested	Records (including those retained by the Immigration Division of Trinidad and Tobago's Ministry of National Security or any other relevant State authority or agency) recording or reflecting the entry into Trinidad and Tobago of the 77 construction personnel who travelled from China for the Project between December 2008 and March 2009.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The rationale underlying Request No. 95 applies similarly here, with added emphasis on Mr Tim Tapper's observation under his TT2 assessment that "<i>evidence of entry into Trinidad and Tobago</i>" for the relevant personnel is absent to substantiate CMEC's claim of personnel dispatch costs [TT ER, ¶ 221]. 2. This indicates that such records have been expressly identified by Mr Tim Tapper as relevant to the assessment of CMEC's personnel dispatch costs, beyond his allegation of duplication with Site Overheads. 3. Accordingly, it is both relevant and material to produce documents that record or reflect the entry of these personnel into Trinidad and Tobago, as they would directly substantiate CMEC's claim and address the evidentiary gap identified by Mr Tim Tapper. 4. These documents are readily identifiable and narrowly scoped, as CMEC's request is limited to a specific timeframe, a defined group of individuals, and a specific category of official records.
C. Responses and/or objections to document request	The objections to Requests 92 and 95 refer. Mr Tapper has identified that evidence of the travel of CMEC to Trinidad and Tobago is the type of evidence on which he would expect <u>CMEC's own claims</u> to be based. Its absence calls into question how CMEC has formulated and quantified that claim. This request effectively seeks to place the burden of proving CMEC's claim on T&T and is therefore fundamentally misconceived. It is self-evident that the (substantial) task of attempting to find immigration records for some 77 CMEC staff members, with the purpose of looking for evidence of something that <u>CMEC</u> has asserted as a fact, would be unduly burdensome for T&T to undertake.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution.

	2. Insofar as the Respondent relies on its objections in Requests Nos. 92 and 95, CMEC's replies in those two requests apply <i>mutatis mutandis</i>. 3. As pointed out in Section B, ¶ 1, "<i>evidence of entry into Trinidad and Tobago</i>" [TT ER, ¶ 221] is the <i>exact</i> type of evidence Mr Tim Tapper, the Respondent's appointed expert, has identified as currently missing but required to substantiate CMEC's claim of personnel dispatch cost. 4. The Respondent's objection rests upon the argument – which has been raised in its objection in Request No. 92 and addressed by CMEC's replies there at ¶ 5 – that "[t]his request effectively seeks to place the burden of proving CMEC's claim on T&T and is therefore fundamentally misconceived". 5. This objection erroneously conflates the <u>burden of proof</u> with the <u>burden of production</u> (which arises from the obligation to produce relevant and material documents in a party's possession, custody or control, whether or not adverse to its interests). Both Parties have accepted the obligation to produce such documents – and the burden of production that comes with it – by agreeing to the document production procedure in PO1 (§ 15.2). 6. As emphasised in CMEC's replies at Requests No. 92, ¶ 5, that CMEC bears the burden of proving its damages is all the more reason why this request is justified. <u>Fairness dictates that the Respondent cannot be allowed to demand strict proof of CMEC's incurred costs – assigning zero value to those costs due to alleged evidentiary gaps</u> [TT ER, ¶¶ 211, 213, 222] (as summarised by CMEC in Request No. 95, ¶ 2) – <u>while simultaneously withholding documents in its own possession, custody, or control that would meet the strict proof it insists upon.</u> 7. As for the alleged burden of locating the entry records for the 77 construction personnel, CMEC notes: a. each of the 77 individuals has been identified by name [C-0604; MT-0055] – enabling the State to retrieve personnel-specific access records directly; b. all entries occurred between December 2008 and March 2009 – allowing the State to apply a narrow four-month search window; and c. it is reasonably expected that Trinidad and Tobago maintains a centralised digital system with electronic
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	records of entry and exit (and the Respondent has not suggested otherwise). Accordingly, retrieval of the requested data should be straightforward. 8. In the circumstances, the probative value of the requested documents clearly outweighs any alleged burden, which appears to be both manageable and overstated.
E. Decision of the Tribunal	The request is granted.

Document Request No	97
A. Documents or category of documents requested	Documents recording or reflecting the number of CMEC personnel – including their basic personal details such as names and respective capacities (e.g. construction personnel, CMEC management team, and/or CMIIC management team) – physically present on the Project site between June 2009 and December 2011 (excluding those documents already submitted by CMEC as evidence). To assist the State in locating relevant documents, documents CMEC reasonably believes to contain such information include (but are not necessarily limited to): (1) Weekly Site Minutes, which contained sections such as "Manpower" or "Security" addressing manpower arrangements and security details concerning personnel access to the Project site (for examples, see C-0639 and C-0640). (2) Access records maintained by or on behalf of Alutrint documenting CMEC personnel's entry to the Project site, including those that recorded or reflected the CMEC personnel who underwent drug tests and/or attended safety orientation sessions upon their entry to the Project site. (3) Alutrint's monthly Financial Reports, which contained a section titled "Communications, Community, Public and Government Affairs" that recorded how many Chinese works were on the site each month (for examples, see C-0322 and C-0360). <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, CMEC confirms and clarifies that: (i) CMEC is prepared to accept production of any one of the three sources identified above, <i>provided</i> it contains the most comprehensive information responsive to this request among the three. CMEC does <u>not</u> seek duplicative production of all sources; and (ii) this request does not require the State to distinguish between responsive documents that have already been submitted into the evidentiary record and those that have not (see note in Request No. 89 which applies <i>mutatis mutandis</i>).
B. Relevance and materiality according to the requesting party (including references to	1. CMEC claims the following costs: a. Downtime costs: US \$3,988,539 for periods between June 2009 and December 2010 due to suspension of the

pleadings, exhibits, witness statements or expert reports)	Project, relying upon the assessment of Mr Michael Tonkin [MT ER, App. 4, ¶ 1.3.1]. b. Site maintenance costs: US \$328,357.20 for the period from October 2010 to December 2011 for site maintenance for the Project, relying upon the assessment of Mr Michael Tonkin [MT ER, App. 5, ¶ 1.3.3]. 2. However, in support of the State's position, Mr Tim Tapper assesses CMEC's relevant costs to be: a. Downtime costs: (i) TT1a: US \$ nil; (ii) TT1b: US \$ nil; or (iii) TT2: US \$3,877,079.04 [TT ER, ¶¶ 347, 348, 357]. b. Site maintenance costs: (i) TT1a: US \$ nil; (ii) TT1b: US \$ nil; or (iii) TT2: US \$204,394.11 [TT ER, ¶¶ 366, 367, 374]. 3. Mr Tim Tapper raises several challenges against CEMC's claim, including <i>inter alia</i>: a. the alleged overlapping of staff between the two claims for certain periods [TT ER, ¶ 352]; b. lack of available information setting out the number of staff resources required for the relevant activities [TT ER, ¶ 369]; and c. no supporting information for the site maintenance period from 1 November to 26 December 2011 [TT ER, ¶ 373]. 4. Given this alleged evidentiary gap by Mr Tim Tapper, it is both relevant and material to produce documents that record or reflect the number of staff resources and capacity of CMEC personnel on site during the relevant periods. These documents may help clarify whether any duplication exists between the two claims and provide evidence to substantiate CMEC's claims. 5. These documents are readily identifiable and narrowly scoped, as CMEC's request is limited to a specific timeframe and specific categories of records.
C. Responses and/or objections to document request	The objections to Requests 95 and 96 refer.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution.

	2. CMEC's replies in Requests Nos. 95 and 96 apply <i>mutatis mutandis</i> .
E. Decision of the Tribunal	The request as refined is granted. The Respondent is ordered to exercise best endeavours to obtain the Alutrint documents responsive to this request.

Document Request No	98
A. Documents or category of documents requested	Contemporaneous documents recording or reflecting Alutrint's review, investigation, verification and/or approval of CMEC's downtime costs and site maintenance costs. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, in the interest of avoiding unnecessary arguments, CMEC provides the following clarifications: (i) The responsive documents are expected to have been <i>created, collated or compiled</i> within the time range of <u>December 2010</u> (when CMEC consolidated its costs claims with supporting documents [C-0029]) <u>to February 2011</u> (when Alutrint notified CMEC of the satisfactory conclusion of its review [C-0269]). (ii) Insofar as the meaning of "<i>recording</i>" or "<i>reflecting</i>" is concerned, the clarification provided in Request No. 73 (Section A) applies <i>mutatis mutandis</i>. In short, the two words are targeted at documents that directly record, evidence, or otherwise capture Alutrint's review, investigation, verification and/or approval of the two heads of costs. This request does not extend to documents that contain only tangential, incidental, or peripheral references.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. In relation to the downtime costs and the site maintenance costs: <u>Memorial, ¶ 339</u>: 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) [...] and confirmed them to be both "<i>in order</i>". <u>C-0269</u> (Alutrint's letter dated 14 February 2011), p. 1: "<i>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.</i>"

	2. Accordingly, it is CMEC's primary position that the downtime and site maintenance part of CMEC's claim should be treated as agreed, having been contemporaneously reviewed, investigated, negotiated, and accepted by Alutrint: Memorial, ¶ 347. 3. In any event, contemporaneous documents recording or reflecting Alutrint's review, investigation, verification and/or approval of CMEC's downtime and site maintenance costs should be produced. Such documents are likely to include internal assessments, correspondence, spreadsheets, or summaries, and would provide organised evidence confirming the staff resources and related costs.
C. Responses and/or objections to document request	The objection to request 89 refers, save that in this case, the request places an undue burden on a third party, which is all the more unreasonable. The Respondent relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint's documents are not the Respondent's documents. There are real and genuine concerns, legal and practical, about these requests. This is a very broad request for no specific type or location of document. It is would be extremely burdensome for the Respondent or for Alutrint to comb through records for any documents which might be said to, in some way, "record or reflect" Alutrint's consideration of the downtime costs. Even if found, these documents would not be material to the outcome. CMEC's case is that these costs should be treated as agreed, because Alutrint agreed them at the time. Whether that is correct is now a question of law or expert analysis; the basis on which Alutrint agreed them does not change that assessment. The final attempt made by CMEC to justify this request is the statement that the documents would "<i>provide organised evidence</i>" of the downtime costs CMEC claims. "Providing organised evidence" is not the threshold for document production. The evidence should be new and material. It is in fact for CMEC to provide organised evidence of its downtime costs. If it cannot do so, and instead relies on a speculative document production request turning up some useful evidence, then it should not have pleaded the point or the quantum claim.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. Insofar as the Respondent relies on its objections in Request No. 89, CMEC's replies in Request No. 89 apply <i>mutatis mutandis</i>.

	3. However, CMEC notes that the objection in Request No. 89 was based on the assertion that the requested documents ought to be in CMEC's possession, custody, or control – that argument should not at all arise here, as this request concerns Alutrint's internal documents. 4. As to the State's alleged lack of possession, custody or control of Alutrint documents, CMEC repeats its Overall Replies, ¶¶ 38-40. 5. As to the State's allegation of "<i>extreme burden</i>", CMEC notes the following circumstances, which demonstrate that the alleged burden is exaggerated and likely contrived. a. <u>First</u>, instead of having to "<i>comb through records for any documents</i>" of "<i>no specific type or location</i>", given that CMEC submitted its consolidated claims for downtime and site maintenance costs (along with supporting documents) on <u>9 December 2010 [C-0029]</u>, and the Alutrint's CEO confirmed satisfactory completion of the review on <u>14 February 2011</u>, it is reasonable to expect that the responsive documents – concerning Alutrint's review, investigation, verification and/or approval of these costs – would either have been created or, if created earlier, collated or compiled during this <u>three-month period</u>. b. <u>Second</u>, and relatedly, given that Alutrint completed an internal review process with a definitive conclusion, it is expected that all relevant documentation relating to the validation of CMEC's downtime and site maintenance costs (including Alutrint's own analysis and verification) would have been consolidated and archived together. c. <u>Third</u>, the Respondent's purported interpretation of "<i>recording or reflecting</i>" as encompassing any document of any level of relevance is inconsistent with the common usage and understanding of this phrase in document production. They are intended to refer to documents that directly or indirectly (but still sufficiently) evidence the described matters. 6. To eliminate any doubt, CMEC has added explicit clarifications in Section A above. 7. As to the State's alleged lack of relevance and materiality of Alutrint's contemporaneous validation of CMEC's costs: a. It suffices to point out that, even if not conclusive, Alutrint's contemporaneous validation of these costs, "<i>the basis on which Alutrint agreed them</i>", and the
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	accompanying supporting documentation, are certainly probative and should be taken into account in the Tribunal's quantum assessment. b. As accepted by the Respondent in its Preliminary Remarks, ¶ 52, relevance and materiality are determined by whether the documents "<i>add something to the evidence</i>" on a factual issue that needs to be determined in the adjudication of the dispute. Here, Alutrint's contemporaneous validation and the related supporting documentation plainly add – potentially significantly – to the evidentiary record in relation to CMEC's claim for downtime and site maintenance costs and are necessary for the Tribunal's comprehensive consideration of this matter. 8. As to the State's final argument regarding the purported distinction between "<i>organised evidence</i>" and "<i>new and material</i>" evidence, this argument is misconceived and beside the point: a. This request does not seek documents that merely organise, reorganise or repackage evidence already submitted by CMEC. Rather, it seeks to complete the evidentiary record by obtaining Alutrint's own contemporaneous validation of CMEC's costs, along with the accompanying documentation that supported such validation and should be read in conjunction with it. b. Such underlying documentation – likely already organised and/or annotated by Alutrint – may have originated from CMEC, from Alutrint itself (i.e. Alutrint's own cost investigations), or from both. The point here is that such "<i>organised evidence</i>" would not have existed in isolation but would formed part of Alutrint's analysis, report, note or other materials that are responsive to this request and fall to be produced. In this sense, any responsive documents will constitute "<i>new and material</i>" evidence. 9. For completeness, as the Respondent's objections referred only to CMEC's downtime costs, CMEC reminds the Respondent that this request concerns both downtime costs and site maintenance costs (although they were reviewed and approved together).
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	99
A. Documents or category of documents requested	The following documents in respect of the upstream facilities which were initially included in CMEC's 2005 EPC Contract but later removed from the 2008 EPC Contract and re-contracted to other contractors: (1) Contracts entered into with other contractors (showing the date, contract price, and scope of works) (2) Documents evidencing whether and the extent to which the construction of these upstream facilities continued after the State cancelled the Alutrint smelter (3) Documents evidencing the actual cost at which the continued upstream facilities were completed (i.e. the value earned by the contractors who carried out these works in CMEC's place) The upstream facilities refer to three separate facilities, namely: (i) the dock and storage yard, (ii) the material storage and handling facilities, and (iii) the conveyor system [Memorial, ¶ 85.2 and Annex 1, p. 1].
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. In Memorial, ¶ 129, CMEC put forward its case on the upstream facilities (supported by sources containing contemporaneous figures). In summary: a. The 2005 EPC Contract prohibited the omission or termination of any works to be carried out by others [C-0011, pp. 74, 84]. b. The State (including through State agency) awarded the upstream works to other contractors, reportedly at costs similar to or higher than CMEC's quoted prices. c. The contractors who carried out those works in CMEC's place earned the value of the works, which CMEC submits it was entitled to perform and profit from. 2. The Counter-Memorial does not respond to these points. 3. CMEC therefore requests the production of the above-described documents which will enable CMEC to substantiate its claim for a potential loss of profit on the upstream works.
C. Responses and/or objections to document request	The objections to Request 92 refer.

D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. Insofar as the Respondent relies on its objections in Request No. 92, CMEC's replies in Request No. 92 apply <i>mutatis mutandis</i>. 3. CMEC further notes that the unfairness would be particularly stark if production were refused in this instance. 4. Here, the request concerns documents in respect of the re-contracting of the upstream works to other contractors in violation of the 2005 EPC Contract. The requested documents are directly relevant and material to the question of whether CMEC was deprived of the opportunity to perform and profit from those works – an issue that in turn bears upon CMEC's loss of profit claim. The documents sought are clearly within the State's possession, custody or control, and <i>undoubtedly not (and never) within CMEC's</i>. 5. In these circumstances, and particularly where the Respondent does not even attempt to deny relevance and materiality, the requested documents should be produced to afford CMEC a reasonable opportunity to present its case and enable a fair determination of the case.
E. Decision of the Tribunal	The request is granted.

Document Request No	100
A. Documents or category of documents requested	The following other Project-related contracts entered into by Alutrint (both before and after the 2009 High Court Decision): (1) Gas Supply Agreement between Alutrint and NGC (15 June 2009) (2) Deed of Lease and Collateral Memorandum of Lease between Alutrint and NEC (15 June 2009; 99 years) (3) Pier User Agreement between Alutrint and NEC (17 July 2009; 30 years) (4) Power Purchase Agreement among Alutrint, T&TEC and TGU (15 September 2009; 30 years) (5) Water Supply Agreement between Alutrint and WASA (23 July 2009) The existence, date, and duration of these contracts can be ascertained from C-0364, p. 2 and C-0232, pp. 21-22. See also Memorial, Annex 1, p. 1. <u>CMEC 12/09/2025</u>: Withdrawn – see Section D below.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The relevance and materiality of the requested contracts are mainly two-fold. 2. First, the fact that Alutrint continued to enter into major long-term contracts to implement the Project after the 2009 High Court Decision – including a 30-year Power Purchase Agreement – formed part of the factual matrix underpinning CMEC's legitimate expectation that the State remained committed to progressing and completing the Project. These contracts reflect the State's affirmative conduct, which CMEC reasonably relied upon. 3. Second, as further addressed in Request No. 101 below, it appears likely that while CMEC's claims remained unpaid and unresolved, Alutrint may have selectively settled or differentially treated other Project-related contracts following the Project's termination.
C. Responses and/or objections to document request	Not agreed. CMEC's explanation as to why these documents are relevant and material does not withstand even cursory scrutiny. First, CMEC avers that the fact of the contracts being entered into after the 2009 High Court decision was part of CMEC's reasonable expectation that T&T would continue to support the project. Leaving aside any debates on the merits of that proposition,

	CMEC has itself stated that the “<i>existence, date, and duration of these contracts can be ascertained [from existing evidence in the proceedings]</i>”. In other words, there is already sufficient evidence to make the point that CMEC wishes to make. What the request seeks is the actual <u>content</u> of those contracts. Plainly, the contents of ancillary Project-related contracts to which CMEC was not a party are not relevant to, and certainly not material to the outcome of, these proceedings. CMEC itself does not even attempt to suggest otherwise, presumably because it is impossible to make out a credible case on relevance or materiality. Second, CMEC avers that it “<i>appears likely</i>” that Alutrint settled or otherwise “<i>differentially treated</i>” these other contracts when the project was terminated. CMEC’s basis for that assertion (in Request 101) is extremely speculative, amounting to no more than the fact that Alutrint still exists, and was at some point in negotiations to settle one of the ancillary contracts. Of course, it is agreed between the parties that Alutrint was also (for some time) in negotiation with CMEC regarding settlement. How CMEC therefore takes equivalent negotiation with other parties to be evidence of unfair treatment is not clear. This is nothing but speculation and fishing. It is not an appropriate use of the disclosure process. However, whether or not CMEC’s interpretation of the significance of those alleged settlements is correct, it does not make the <u>contracts themselves</u> relevant or material. Obviously, the contracts cannot reveal anything about how they were later dealt with on termination, or whether this was fair treatment of CMEC. They are an irrelevance to proceedings and offer no probative value for the point that CMEC is seeking to make. The Respondent also relies on the Preliminary Remarks, ¶¶ 38-43. Alutrint’s documents are not the Respondent’s documents. There are real and genuine concerns, legal and practical, about these requests.
D. Replies to objections and request for resolution	1. CMEC takes note that the State does not dispute the “<i>existence, date, and duration</i>” of these other Project-related contracts, including the fact that long-term contracts continued to be entered into to progress the Project after the 2009 High Court Decision. 2. On this basis, and <i>provided</i> that the text of the contracts does not affect a proper understanding of the settlement outcomes between Alutrint and the other contracting parties (requested in Request No. 101 below), CMEC is prepared to withdraw this request.

	3. No decision is required from the Tribunal at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	101
A. Documents or category of documents requested	Documents evidencing or reflecting whether, when, and to what extent each of the Project-related contracts listed in Request No. 100 above have been paid or otherwise settled. <u>CMEC 12/09/2025</u>: To avoid any doubt, this request seeks post-Project termination "settlement outcome" documents, not "settlement negotiations" documents. CMEC expects the outcome-related records to likely take the form of settlement agreements (however called) and/or payment confirmations.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. As explained in Memorial, Annex 1, p. 6, these contracts were executed between various State agencies, and their status is presently known only to the State. Yet, the Counter-Memorial entirely circumvents this issue and provides no disclosure or explanation. 2. Nonetheless, there are indications that Alutrint may have settled some of these Project-related contracts, despite the continued non-payment of CMEC's claims. a. The State averred in the ICC Proceedings that Alutrint remained in existence as a non-operational company to wind up liabilities of several Project-related contracts [C-0388, ¶ 108(5)]: <i>"[...] Alutrint entered into a number of project agreements in order to take the project forward including the EPC contract with CMEC, a separate contract for piling and dynamic compaction, a power purchase agreement, a gas supply agreement, a pier user agreement and water supply agreement. Alutrint remains in existence as a non-operational company to wind up these various agreements and deal with the implications of those contracts."</i> b. Alutrint's 2011 financial statements suggest that Alutrint was in negotiations with T&TEC to settle outstanding contractual commitments under the Power Supply Agreement [C-0373, p. 28]. 3. The requested documents are therefore material to assessing whether CMEC was treated fairly and equitably, and whether the State's conduct amounted to discriminatory or inconsistent treatment – particularly if other counterparties

	were paid or settled while CMEC's claims were ignored or deferred.
C. Responses and/or objections to document request	Not agreed. <u>Fishing</u> This is a speculative fishing request from CMEC, which would put T&T to substantial work. CMEC's request is again couched in extremely broad terms, reflecting the fact that CMEC does not know what documents it is requesting or whether any such documents actually exist (despite its confirmation that it believes all the requested documents to exist and be within T&T's possession or control). The fact that CMEC requests any documents demonstrating "<i>whether, when and to what extent</i>" any of the ancillary Project-related contracts were paid is a clear illustration that CMEC has no basis for suggesting that these third-party contract holders were treated more favourably than CMEC by Alutrint. Rather, CMEC merely hopes that they were, and that there is some evidence for that which this wide and unsupported request will reveal. This is another paradigmatic example of a pure fishing request, of the kind Article 3.3 of the IBA Rules is intended to prevent. The alleged materiality is untenable and unpleaded. The point that the claim has been slashed to about half of what CMEC had been claiming against Alutrint, then later T&T, throughout, is repeated. It is worth noting that the request would require Alutrint (if it agrees to do so) to search for all documents, of any kind, relating to several third parties, over a period of several years, and sort through them for potential relevance to this request. It is not, therefore, a request for production; once again, CMEC's is a request for T&T to open up a full-scale search and disclosure exercise. The Respondent relies on the Preliminary Remarks, ¶¶ 38-43 regarding Alutrint documents more generally. <u>Privilege</u> Even if CMEC's request were properly focused and relevant (which it is not), it still amounts to a request for privileged and confidential material. CMEC's own request (and Request 100) clearly identifies that it is interested in the settlement of other terminated contracts. Clearly, documents relating to any settlement negotiations or agreements as may have existed are privileged (as set out in T&T's Preliminary Remarks at ¶¶ 59 and 60). Moreover, that privilege and confidentiality belongs equally to the third parties in question; it would be improper for Alutrint to unilaterally provide them to T&T, for the purpose of onward

	disclosure to CMEC (and it is not open to GORTT to unilaterally waive Alutrint's privilege). Additionally, it is important to note that CMEC <u>failed to pursue its contractual claim against Alutrint</u> (Counter-Memorial, ¶¶ 492-508, 1218, and Appendix IV). Other parties may have been more proactive. It is impossible for T&T (or Alutrint) to provide the proper context of any payments or settlements without reference to privileged material. CMEC seeks production of information which would allow it to suggest adverse inferences against T&T, knowing that the latter is unable to rebut those inferences by reference to the true underlying facts. The documents would therefore be of no real probative value in the proceedings but risk serious prejudice to GORTT and to third parties.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. General Observations 2. Before addressing the specific objections, CMEC makes the following general observations: a. The State has been evasive regarding the status of the other Project-related contracts. b. Based on the State's contemporaneous statements – specifically, its description of Alutrint's post-termination role as a vehicle for settling liabilities⁶ [C-0388, ¶ 108(5)] and its instruction to Alutrint to settle "<i>all obligations, legal, contractual and otherwise associated with the project</i>"⁷ [C-0373, p. 27; C-0374, p. 24] – CMEC has a reasonable basis to believe it may have been treated differently, if not unfairly, inequitably, or discriminatorily, by being denied <i>any</i> payment for over a decade. c. CMEC has therefore identified five other major Project-related contracts in the Memorial (Annex 1, p. 6), and laid the foundation for this request by noting that "<i>their status</i>

⁶ The State made the following statement in the ICC Proceedings: "[...] *Alutrint entered into a number of project agreements in order to take the project forward including the EPC contract with CMEC, a separate contract for piling and dynamic compaction, a power purchase agreement, a gas supply agreement, a pier user agreement and water supply agreement. Alutrint remains in existence as a non-operational company to wind up these various agreements and deal with the implications of those contracts.*" [C-0388, ¶ 108(5)]

⁷ The MEEI's instruction to Alutrint in October 2012 – "*all obligations, legal, contractual and otherwise associated with the project be settled accordingly*" – was restated in Alutrint's 2011 and 2012 financial statements. [C-0373, p. 27; C-0374, p. 24]

	<i>(including whether terminated, paid or otherwise settled) is known to the State but not (presently) CMEC".</i> d. The Counter-Memorial, however, entirely circumvents this issue. e. Now, in resisting this document request, the State's response appears to suggest that payments or settlements have indeed occurred in respect of those other contracts, despite the continued non-payment of CMEC's claim. f. As will be addressed in more detail below, the State's contention is essentially that circumstances may not be entirely comparable because "[o]ther parties may have been more proactive". Yet it refused to "provide the proper context", by asserting a blanket, unsubstantiated, and inapplicable claim of without prejudice privilege between Alutrint and third parties. g. In light of this, the Tribunal is presented with two options: (i) refuse this request, allowing the State to avoid scrutiny of its conduct through vague and unsupported assertions; or (ii) grant this request, enabling the production of relevant documents and allowing both Parties to address their implications in the second round of written submissions. h. CMEC submits that Option (ii) is the only course consistent with the overriding principle of fairness and equality, CMEC's right to a reasonable opportunity to present its case, and the Tribunal's mandate to determine the dispute on a fully informed basis. <i>Fishing Allegation Misconceived; Burden Argument Overstated</i> 3. <u>As to the allegation of fishing generally</u>, CMEC repeats ¶¶ 2(b)-(c) above – CMEC has a reasonable basis for believing there has been inconsistent treatment toward CMEC's claim and has specifically identified five other Project-related contracts that are the subject of this inquiry. 4. <u>As to the allegation that this request is "extremely broad"</u>, the State has misunderstood the request and/or overstated the scale of the search required. a. This request is limited to documents evidencing whether, when, and to what extent the <u>five contracts</u> (with <u>four</u>
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	counterparties) were paid or settled – in other words, <i>only the outcome-related records</i>. The scope of the search is finite and readily identifiable (to reiterate: 5 contracts, 4 counterparties, outcome records only). b. The State's assertion that this would require a "<i>full-scale search and disclosure exercise</i>", a "<i>search for all documents, of any kind</i>", and an effort to "<i>sort through them for potential relevance</i>" is exaggerated. The requested documents are core financial and contractual records that would have been already maintained, particularly in light of Alutrint's stated purpose of "<i>wind[ing] up these various agreements and deal[ing] with the implications of those contracts</i>" [C-0388, ¶ 108(5)] – and the fact that it is a non-operational company that otherwise has no activities at all.⁸ 5. <u>As to the allegation of lack of materiality</u>, the State's argument is unexplained. It appears to suggest that the State is absolved of liabilities for non-compensation or was entitled not to compensate CMEC at all by reason of a reduction in CMEC's claim amount – despite <i>its (contemporaneous as well as post-arbitration) acknowledgement of substantial liabilities owed to CMEC</i>.⁹ 6. This line of "quantum-based" liability defences is untenable on its face. At this stage (prior to full rebuttal in the Reply Memorial), it suffices to point out that <i>the State (including through Alutrint) never communicated any quantum comments to CMEC or otherwise attempted any step to resolve the differences with CMEC during the decade-long claim negotiations. All quantum-based arguments only first appeared in the State's bifurcation submissions in this arbitration in April 2024. This is especially against the backdrop that CMEC has on numerous occasions repeatedly expressed its full willingness and readiness to provide any further information, documents or clarifications upon request</i> [Memorial, ¶ 389, fn. 768]. 7. If anything, the State's argument underscores the importance of this request. Disputes over compensation amounts are common – but was Alutrint able or willing to negotiate and reach a final settlement with the other counterparties? The
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⁸ This is explicitly acknowledged by the State in its Preliminary Remarks, ¶ 43(2) ("*Alutrint's commercial and day-to-day activities ceasing after the project was terminated*").

⁹ See, e.g., C-0307, p. 14 (January 2012 liability estimate at US \$32 million); C-0445, p. 14 (October 2017 liability assessment at US \$100 million); C-0499, p. 1, at 47:04 (Prime Minister's June 2023 liability assessment after CMEC's commencement of the present arbitration: "*We have seen it not to be 300 million, but it is certainly at the end of the day something substantial*").

	requested documents will shed light on whether CMEC was treated differently from similarly situated counterparties. 8. <u>As to the (frivolous) allegation of lack of possession, custody or control of Alutrint documents</u>, CMEC repeats its Overall Replies, ¶¶ 38-40. <i>Privilege Objection Misapplied</i> 9. As noted in ¶ 2(f) above, the State's claim of privilege is overbroad, unsubstantiated, and in any event inapplicable to the documents requested. 10. <u>First</u>, the State's blanket assertion that "[c]learly, documents relating to any settlement negotiations or agreements as may have existed are privileged" is – ironically, in its own words – <i>clearly</i> incorrect. 11. The "without prejudice" privilege, as contemplated in Article 9.4(b) of the IBA Rules, protects documents created "<i>in connection with and for the purpose of settlement negotiations</i>". It does not extend to all documents that merely "relate to" settlement discussions, nor does it cover the outcome of such negotiations (e.g. the settlement agreements themselves or records of payments made pursuant to them). 12. Here, CMEC seeks only the settlement outcome documents. As such, the without prejudice privilege does not arise as a bar to production in the first place. 13. For completeness, confidentiality alone is not a valid ground to resist production. All (non-public) documents produced or submitted in this arbitration will be kept confidential and used only in connection with the arbitration: IBA Rules, Article 3.13. 14. <u>Second</u>, the State argues that the production of the requested documents would be prejudicial, because the payments or settlements cannot be put in "<i>proper context</i>" "<i>without reference to privileged material</i>", thereby risking "<i>serious prejudice to GORTT and to third parties</i>". 15. As a threshold matter, this is not an argument that the requested documents themselves are privileged under Article 9.2(b) of the IBA Rules. Rather, it is an argument that disclosure would be unfair or inequitable under Article 9.2(g), due to the alleged risk of prejudice. For such an objection to succeed, the standard is high: the consideration of fairness or equality must be determined by the Tribunal to be <i>compelling</i>.
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	16. Substantively, this argument is unconvincing and, at best, half-baked. The "<i>privileged material</i>" alluded to appears to refer to background facts regarding how or why Alutrint reached settlements with other counterparties. It is difficult to see how such background facts would attract privilege, and on what basis. 17. The only "explanation" offered by the State is a vague and speculative assertion that "[o]ther parties may have been more proactive". Even assuming that is true (which is doubtful – see CMEC's persistent pursuit of its claim as detailed in Memorial, § E.9), the degree of proactivity or the steps taken by other counterparties – such as initiating negotiations or litigation – are not privileged. These are factual matters concerning the existence of negotiations or proceedings, not privileged negotiation content or litigation strategy. The State remains free to invoke such facts, if any, as it sees fit. 18. In any event, even assuming <i>arguendo</i> that some background facts were privileged as between Alutrint and its counterparties, it is clear that neither party would suffer prejudice, let alone serious prejudice, from disclosure in this arbitration: a. The request is limited to the outcome-related records of the settlements that have already been concluded. They are "done deals" which renders the rationale for protecting pre-settlement communications irrelevant. b. Their disclosure is limited to use in this arbitration, whose confidentiality will be preserved within the bounds of this arbitration. c. CMEC has no financial or other interest in the settlements between Alutrint and other counterparties. It does not seek to challenge or undermine those settlements, nor will it rely on any privileged information against any of them. 19. As to the unfounded allegation that "<i>CMEC failed to pursue its contractual claim against Alutrint</i>" (citing the discontinuance of the DAB reference in 2015), CMEC will join issue with the Respondent on the true circumstances surrounding the 2015 settlement negotiations (see e.g. Requests Nos. 75 and 76). 20. In conclusion, the State's privilege objection is both legally and factually misplaced. The documents sought are not protected by without prejudice privilege, and any residual concern about "context" – which is merely alleged and
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	wholly unsubstantiated – falls far short of the compelling standard required under Article 9.2(g) of the IBA Rules.
E. Decision of the Tribunal	The request is granted in part limited to showing when each of the Project-related contracts listed in Request No. 100 above have been paid or otherwise settled.

Document Request No	102
A. Documents or category of documents requested	Documents evidencing or reflecting when Mr Tim Tapper and Mr Chris Hillier, both of Turner & Townsend, were <u>initially</u> engaged by the State (including through the State's counsel) and in what capacity. To avoid any doubt, CMEC is requesting documents shedding light on the <u>timing</u> and <u>nature</u> of the initial engagement of the two experts by the State. To the extent that any responsive documents contain legally privileged content (as properly determined), CMEC has no objection to such content being redacted in accordance with and subject to PO1, § 15.6.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. This goes to the independence (or lack thereof) of the Respondent-appointed experts: Mr Tim Tapper as an "independent" quantum expert and Mr Chris Hillier as an "independent" engineering expert [Counter-Memorial, ¶ 33(b)]. 2. Without revealing the content of any settlement negotiations or otherwise waiving privilege, CMEC understands that Mr Tim Tapper and other associate(s) of Turner & Townsend may have previously provided expert assistance to the State in a non-independent capacity. 3. However, neither Mr Tim Tapper nor Mr Chris Hillier disclosed the relevant circumstances in their expert reports. 4. Such prior involvement, coupled with the complete lack of disclosure, casts doubt on the independence of Mr Tim Tapper and Mr Chris Hillier and the objectivity of the opinions expressed in their expert reports. 5. CMEC reserves the right to make further applications and/or submissions after reviewing the documents produced under this request.
C. Responses and/or objections to document request	Not agreed. This is a wholly improper request, and allegation, from CMEC. As CMEC well knows, Mr Tapper was engaged to provide expert advice to T&T in relation to the quantum of CMEC's mooted claim relating to the Project. CMEC disingenuously omits this from its request, preferring to imply that Mr Tapper is somehow engaged by T&T other than in relation to this dispute (which he is not). It serves to note here that despite its token effort at a disclaimer, CMEC has, by the nature of this request, revealed some details of without prejudice discussion between the parties in a document

	that may be put before the Tribunal. That is improper and unacceptable. Information which came to CMEC in the course of those without prejudice discussions cannot be used or referred to before the Tribunal, as CMEC ought to know. Using this to “<i>cast doubt on the independence of Mr Tim Tapper and Mr Chris Hillier</i>” is regrettable. Further, CMEC’s comment that it seeks merely to understand the “<i>timing and nature</i>” of Mr Tapper’s initial engagement goes nowhere. Any and all documents relating to that engagement are recognised as privileged by Article 9 of the IBA Rules, as set out at ¶¶ 56-63 of T&T’s preliminary comments. This applies intrinsically to all documents which would be responsive to the request and the request is therefore redundant. Mr Tapper and Mr Hillier are regulated and respected professionals with many years’ experience of the strictures and requirements of expert witness instruction, and have duly signed their appropriate declarations of independence. CMEC’s comments amount to an allegation that those declarations were false – an allegation for which CMEC has no actual or plausible basis. To impugn the professional integrity of Mr Tapper and Mr Hillier on a basis which is at best ill-conceived, and at worst manufactured and disingenuous, is exceedingly poor conduct on CMEC’s part. In light of all the above, T&T invites CMEC to withdraw this request and proposes that it is removed from the list of requests which go to the Tribunal (if any), in order to (i) protect the without prejudice privilege between the parties that the request brazenly flouts, and (ii) avoid furthering the baseless allegations implicit in CMEC’s request. If CMEC does not agree to such withdrawal, the objections above stand and T&T intends to draw the Tribunal’s attention to this request as a matter of conduct and costs.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. <i>Relevance and Materiality</i> 2. As explained in Section B, this request seeks documents that <u>clarify whether there is "double hatting" by the Respondent's appointed experts</u> – Mr Tim Tapper and Mr Chris Hillier, both of Turner & Townsend – <u>in this dispute</u>, involving either or both of them giving expert evidence to the Tribunal under a declaration of independence, while simultaneously or previously providing expert advice to the Respondent in a non-independent capacity.

	3. CMEC did not seek documents concerning, or imply, Mr Tapper's or Mr Hillier's involvement with the State in other disputes – although any such involvement would also have been disclosable. 4. The State's response indeed confirms that "<i>Mr Tapper was engaged to provide expert advice to T&T in relation to the quantum of CMEC's mooted claim relating to the Project</i>". But still, it offers no explanation as to when that "<i>expert advice</i>" engagement began, when it ended (if at all), and whether Mr Hillier – of the same firm – participated in or was made aware of that engagement. 5. This is a matter that gives rise to justifiable doubts about the experts' impartiality.¹⁰ It is well accepted in international arbitration that an expert would be expected to disclose any present and past relationships with participants in the proceedings, so as to allow the opposing party an opportunity to scrutinise the expert's self-assessment of independence and, where appropriate, to challenge it. 6. The consensus is evident from the two main guidelines governing party-appointed experts – the IBA Rules and the CIArb Protocol (detailed below). 7. The 2020 IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules) provides at Article 5.2(a) that: <i>"The Expert Report <u>shall</u> contain: (a) the full name and address of the Party-Appointed Expert, <u>a statement regarding his or her present and past relationship (if any) with any of the Parties, their legal advisors and the Arbitral Tribunal [...]</u>" (emphases added)</i> 8. Similarly, the 2007 CIArb Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration (CIArb Protocol)¹¹ provides at Article 4.4(b) that: <i>"An expert's written opinion <u>should</u>: [...] (b) <u>state any past or present relationship with any of the Parties, the Arbitral Tribunal, counsel or other representatives of the Parties, other</u></i>
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¹⁰ For example, concerns arise as to whether the experts' connections with the Respondent or its legal advisors, or any previously acquired knowledge of case-relevant information, may create a conflict of interest and/or compromise their ability to evaluate the case in a neutral manner and provide an objective and unbiased opinion.

¹¹ **CL-0169**, Chartered Institute of Arbitrators (CIArb) Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration.

	<i>witnesses and any other person or entity involved in the Arbitration;" (emphases added)</i> 9. Mr Tapper's and Mr Hiller's failure of disclosure in their expert reports – compounded by the State's continued refusal of disclosure and blanket assertion of privilege (which CMEC will address next) – is a matter of concern and warrants scrutiny. 10. Documents that shed light on the <u>timing</u> and <u>nature</u> of the State's initial engagement of Mr Tapper and Mr Hillier (subject to proper redactions) are therefore relevant and material to the assessment of the experts' independence, and thus to outcome of this case. <i>Privilege</i> 11. The Respondent's privilege objection is essentially two-fold: (a) CMEC has infringed without prejudice privilege; and (b) "[a]ny and all documents relating to that [prior] engagement" are privileged, referring indiscriminately to Preliminary Remarks, ¶¶ 56-63. Both of these allegations can be disposed of quickly. 12. First, CMEC does not refer to or rely on the <i>contents</i> of any without prejudice negotiations between the Parties, which is what Article 9.4(b) of the IBA Rules contemplates.¹² Nor would the production of the requested documents – which can be redacted to retain only information concerning the timing and nature of the State's initial engagement with Mr Tapper and Mr Hillier – reveal any such content. 13. Further, fairness and equality – as recognised in Article 9.4(e) of the IBA Rules and as general principles of international law – justify and indeed require disclosure of the experts' prior (or potentially ongoing) relationship with the Respondent, to ensure transparency and a level playing field in the proceedings. 14. As to the <i>blanket</i> assertion of <i>unspecified</i> privilege over <i>all</i> documents relating to its prior engagement of or involvement with Turner & Townsend, the Respondent has provided no proper substantiation of privilege, no justification for such an overbroad scope, no explanation as to why redactions cannot address any privilege concerns, and has
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¹² **CL-0164**, 'Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration', 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force, p. 28.

	disregarded the fact that the requested information is disclosable in the first place. <i>CMEC's Reservation of Rights</i> 15. CMEC reiterates its reservation of rights at Section B, ¶ 5, concerning further applications and/or submissions in relation to the Respondent's appointment of experts and the assessment of their independence. 16. Further, the Respondent's accusations in Section C – asserting that the request is "<i>wholly improper</i>", "<i>ill-conceived</i>", "<i>manufactured</i>", "<i>disingenuous</i>", "<i>baseless</i>" and that CMEC engaged in "<i>exceedingly poor conduct</i>" – are serious, unwarranted, and unfounded. CMEC reserves its right to make further submissions on costs and conduct in relation to the taking of evidence.
E. Decision of the Tribunal	The request is granted.

Document Request No	103
A. Documents or category of documents requested	Any correspondence, minutes and other exchanges (in whatever form) between Alutrint and/or the State, on the one hand, and CMEC, on the other hand, in the lead-up to the 2008 EPC Contract that recorded or reflected CMEC's requirement for 5% profit and 5% overhead. <u>CMEC 12/09/2025</u>: The time range for the search is <u>from May 2008</u> (when CMEC submitted its US \$465 million tender [C-0151, p. 12]) <u>to October 2008</u> (when the 2008 EPC Contract was concluded with a Contract Price of US \$414 million [C-0015, p. 26]).
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The Parties dispute whether CMEC is entitled to any loss of profit as part of full reparation compensation, and if so: a. whether CMEC is entitled to 5% profit alone, or 5% profit plus 5% overhead: Memorial, ¶¶ 720-722 v. Counter-Memorial, ¶¶ 39-40. b. whether the 5% profit and 5% overhead are inclusive of, or in addition to, the EPC Contract price: Memorial, ¶ 126 v. Counter-Memorial, ¶ 119. 2. This debate in part concerns the proper interpretation of the 2008 EPC Contract, specifically Sub-Clause 1.2 of the PCC thereof [C-0015, p. 10]. <i>In the Contract, provisions including the expression "reasonable profit" shall be (5%) and "overhead" shall be (5%) of the Cost. Reasonable profit and overhead are in addition to the contract price." Add to the text after the words "Contract Price" "For the avoidance of doubt, Cumulative Amount of Payment under this Clause shall not exceed 10% of the Costs.</i> 3. This provision is a revision of (with additions to) Sub-Clause 1.2 of the Conditions of Contract of the 2005 EPC Contract, which states [C-0011, p. 14]: <i>In the Contract, provisions including the expression "reasonable profit" require this profit to be five percent (5%) of this Cost. And the expression "overhead" shall mean five percent (5%) of the Cost.</i> 4. CMEC's position is that it clearly communicated its requirement for 5% profit and 5% overhead, in line with its established track record in delivering international

	engineering contracting projects, in the lead-up to the 2008 EPC Contract. 5. For instance, when writing to Alutrint's then Managing Director, Mr Renda Butler, in August 2007, CMEC explicitly emphasised its requirement for 5% profit and 5% overhead and accordingly requested a price increase for CMEC's scope of works on the downstream facilities [C-0641, p. 1]. 6. CMEC therefore reasonably believes that similar communications and exchanges must exist with respect to CMEC's works on the smelter element of the Project. Hence this request. 7. It is notable that the tailored language in Sub-Clause 1.2 of the PCC of the 2008 EPC Contract – particularly the addition of the final sentences clarifying the relationship with the contract price, which were absent from the 2005 EPC Contract – also suggests the existence of extensive discussions on this subject. 8. As the Respondent itself argues that "<i>it is the provisions of the EPC Contracts which identify and define the scope of those rights and also which affect what constitutes proper reparation for the loss of those rights</i>" (Counter-Memorial, ¶ 231), it is expected to recognise the relevance and materiality of the requested documents to the interpretation of the 2008 EPC Contract, and by extension, to the proper quantification of damages to CMEC.
C. Responses and/or objections to document request	Not agreed. This request is both irrelevant and unduly burdensome. ¶¶ 44-47 of T&T's Preliminary Remarks and the objection to request 89 refer: this is a request for CMEC's own correspondence, sought for the purpose of proving its own case. It is not for specific documents, or even a well-defined category of documents: it is for "<i>correspondence, minutes and other exchanges (in whatever form)</i>" – which is to say any form of document at all – relating to a particular issue (from 2008, where digital records are not so readily available). The undertaking for T&T to find such documents would be substantial. It is clearly unduly burdensome for T&T to be ordered to undertake that search on CMEC's behalf, particularly where CMEC has given no details of the searches (if any) that it has undertaken to find these documents for itself. Further and in any event, the exchanges are immaterial to the dispute. CMEC's own assertion is that such contractual provisions are "<i>entirely irrelevant</i>": Memorial, ¶ 453. In any event, the provisions would fall to be interpreted based on the

	wording of the contract, not CMEC's alleged subjective intentions for the clause. It is absurd for CMEC to impose an obligation on T&T to conduct a fishing exercise for (likely non-existent) documents to support its (untenable) contractual interpretation, which is not relevant to the <u>treaty</u> claim under consideration.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as clarified above) and submits it for the Tribunal's resolution. 2. <u>As to the burden argument</u>, CMEC repeats its Overall Replies, ¶¶ 43-47 which demonstrate CMEC's extensive and diligent search and effort in establishing the factual record of this case. In particular, as explained in Section B, this request is formulated based on CMEC's identification of the "5% + 5%" requirement for the downstream element of the Project [C-0641, p. 1], which gave CMEC reasonable basis to believe the existence of similar communications with respect to the smelter element. 3. This request is limited to the exchanges between Alutrint and CMEC in the period from May 2008 (US \$465 million tender [C-0151, p. 12]) to October 2008 (US \$414 million [C-0015, p. 26]) – when the price went down by exactly 10%. It is therefore reasonable to assume targeted discussions about the price composition have occurred during this period, especially regarding whether the parties understood CMEC's "5% + 5%" requirement to be in addition to the EPC Contract price. 4. <u>As to the materiality argument</u>, as explained in Section B, this request is formulated in light of the Respondent's primary position that <i>"it is the provisions of the EPC Contracts which identify and define the scope of those rights and also which affect what constitutes proper reparation for the loss of those rights"</i> (Counter-Memorial, ¶ 231). 5. It will not be fair for the Respondent to dis-own its position in resisting production and likely re-take that position after the close of production. 6. Factual background is part of the admissible and relevant context to help understand the terms of the 2008 EPC Contract, especially when (as is here) the text of the contract itself is not fully clear. The requested documents will demonstrate whether the parties shared a common understanding of CMEC's 5% profit and 5% overhead requirement, which would have formed part of the background knowledge of the notional reasonable person.

E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.
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Document Request No	104
A. Documents or category of documents requested	To the extent not covered by Request No. 103 above, any other documents recording or reflecting the parties' contemporaneous understanding or interpretation of Sub-Clause 1.2 of the PCC of the 2008 EPC Contract.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC repeats the reasons stated in Request No. 103, ¶¶ 1-8. 2. This request captures additional documents that should shed light on the parties' intended application of the profit and overhead provision in the 2008 EPC Contract.
C. Responses and/or objections to document request	The objections to Requests 11 and 22, in respect of “catch-all” requests, refer, as do ¶¶ 4-37 of T&T’s preliminary remarks. The objections to Request 103 are also repeated.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. CMEC repeats its replies in Request No. 103. 3. Regarding the objection based on lack of specificity, CMEC repeats its Overall Replies, ¶¶ 90-100. The present formulation is clear and effective. The Respondent will be able to implement the search for documents in a time period reasonably close to the entry into the 2008 EPC Contract. 4. Burden has to be relatively understood in light of the potential evidential value of the requested documents – noting that the parties' difference over profit and overhead (which is a result of the different interpretations of Sub-Clause 1.2 of the PCC of the 2008 EPC Contract) is among the greatest differences in the quantification exercise.
E. Decision of the Tribunal	The request is denied on the basis it is insufficiently relevant or material to the issues in dispute.

Document Request No	105
A. Documents or category of documents requested	Documents displaying or explaining the criteria and/or basis for the classification of "State Enterprise" and "State Agency", respectively, in Trinidad and Tobago.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC has pleaded in Memorial, ¶¶ 31-32 that Alutrint is consistently identified as a "State Enterprise" and "State Agency" in various official documents. The Memorial then went on to further elaborate on the State's effective control over Alutrint: Memorial, ¶¶ 33-35; Annexes 2-3. 2. The Respondent did not dispute the two official classifications [Counter-Memorial, ¶¶ 77, 369], but: a. asserted that the label of State Enterprises applies to all government-owned companies, whether wholly-owned, majority-owned or minority-owned [Counter-Memorial, ¶ 77, 424]; and b. altogether avoided addressing the categorisation of State Agencies. 3. In brief response, CMEC notes that: a. The State Enterprises sector in Trinidad and Tobago comprises a fairly small number of companies. The latest figure in 2024 is 47 (37 wholly-owned, 6 majority-owned, and 4 minority-owned) [C-0588, p. 7]. Further, it is stated that State Enterprises are incorporated "<i>with the overall objective of supporting Government Policy for the socioeconomic development of Trinidad and Tobago</i>" [C-0588, p. 7]. Considering the public element in their service and the small size of membership, it seems implausible that all companies in which the State holds a shareholding – regardless of proportion – would, as the Respondent contends, qualify as State Enterprises. b. As for the categorisation as State Agencies, it is evident that distinct criteria apply, separate from those governing State Enterprises. This is not least demonstrated by the fact that only Alutrint, not Alutech (another 60:40 joint venture company between GORTT and Sural, in respect of which see Memorial, ¶ 191), is classified as a State Agency in: i. the International Monetary Fund (IMF)'s country report on Trinidad and Tobago, citing the "Ministry of Finance" as the source [C-0444, pp. 18-19]; and

	ii. the Trinidad and Tobago Securities and Exchange Commission's published list of State Agencies [C-0516, p. 1]. 4. CMEC is therefore making this request for the Respondent to disclose documents that set out or explain the <i>respective</i> criteria and/or basis for classification as "State Enterprise" and "State Agency" in Trinidad and Tobago – whether such classification is based on authorising law or rule, other delegation of authority, control, any combination of the foregoing, or otherwise. 5. This is clearly a relevant and material factor to take into account in determining whether Alutrint's conduct is attributable to the State under Articles 5 and/or 8 of the ILC Articles (which broadly comes down to an analysis of structure, function, and control): Memorial, § I v. Counter-Memorial, § H.
C. Responses and/or objections to document request	Not agreed. The purpose and need for this request is hard to discern. This request appears to be a call for research assistance in respect of identifying what criteria or factors apply to the designation of State Enterprises in the documents already provided to CMEC. The Respondent does not consider this request to give rise to a viable or actionable request for disclosure of documents. It is unclear what the exercise of locating such documents ought to be, and why they exist and are within T&T's possession, custody or control.
D. Replies to objections and request for resolution	1. CMEC maintains this request and submits it for the Tribunal's resolution. 2. The classification of Alutrint as "State Enterprise" and "State Agency" is recorded in official documents – respectively in the MOF's State Enterprise Investment Programme and in the IMF's Country Report for Trinidad and Tobago citing MOF as the source. 3. Therefore, the responsive documents which contain the relevant information regarding classification criteria are reasonably expected to be within the MOF's possession. 4. This bears upon the question of attribution (which involves analysis of structure, function and control). If the State's own criteria of classifying Alutrint as State Enterprise and State Agency involve these factors (especially control), it is strong evidence that adds to the argument on the attribution of Alutrint's conduct to the State.

E. Decision of the Tribunal	The request is granted.
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Document Request No	106
A. Documents or category of documents requested	Documents recording or reflecting when and why discussions or preparations with Votorantim in connection with the Project ceased. <u>CMEC 12/09/2025</u>: Without prejudice to the propriety of the original request, by way of further assistance to the State, CMEC confirms that it is prepared to accept the following documents in satisfaction of this Request 106: Any documents from Votorantim to GORTT indicating or notifying its intention to withdraw from the Project on 30 September 2010; and/or Any documents from Votorantim to GORTT indicating or notifying its openness to extend the long stop date (30 September 2010) under the Project Agreement or otherwise continue discussions of the Project despite its expiry. CMEC expects that these two threads of communication would be alternative rather than cumulative; however, to the extent that Votorantim provided inconsistent indications, responsive documents under both sub-categories should be produced.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. It is undisputed that GORTT and Votorantim signed a Project Agreement on 4 December 2009 [C-0218], with the intention of having Votorantim replace Sural as the new joint venture partner for the Project. 2. The Project Agreement would expire (and expired) on 30 September 2010, failing the parties' execution and delivery of all definitive documentation [C-0218, p. 16 (Cl. 11(b)); Counter-Memorial, ¶ 160]. 3. In the Counter-Memorial, the Respondent emphasised that the non-removal of Sural as a shareholder was a key obstacle to finalising the agreement with Votorantim [¶¶ 156, 158], but it was critical for the success of the Project for Trinidad and Tobago to have a joint venture partner [¶ 158]. 4. This framing seems to suggest that the Project's failure may have stemmed from Votorantim's lack of commitment. 5. However, in fact, the Finance Minister's public announcement of the termination of the Project (on 8 September 2010) even preceded the long stop date under Votorantim's Project Agreement (which was 30 September 2010).

	6. Further, importantly, as noted by Mr Philip Julien (Alutrint CEO) in his exit report [C-0300, p. 5]: <i>"Though the Project Agreement expired in September 2010 due to the GORTT's project cessation announcement, they have indicated an on-going interest with working with GORTT, despite their quoted \$7M USD outlay on the Alutrint project. In February 2011, at NEC's invitation, they presented their professional portfolio and view on the prospects of aluminum industry in Trinidad."</i> (emphasis added) 7. The requested documents are therefore relevant and material to establishing who initiated the cessation of discussions and on what basis, and whether Votorantim's withdrawal was but a reaction to GORTT's termination decision. These will further assist in evaluating the credibility of the State's narrative and whether its decision to terminate the Project was legitimate and proportionate.
C. Responses and/or objections to document request	Not agreed. These documents are not relevant and the request is overly broad and speculative. There is no dispute in respect of the chronology: the date on which the Project was terminated and when the Project Agreement expired. Matters concerning Votorantim, to CMEC's knowledge, are detailed in the Final Award (C-0014). There is no basis for making the Respondent conduct a broad search for a vague series of documents that might provide fodder for CMEC's attempts to "evaluate" the "credibility" of the State's narrative. None of these purported justifications come close to establishing the criteria of relevance and materiality to outcome.
D. Replies to objections and request for resolution	1. CMEC maintains this request (as refined above) and submits it for the Tribunal's resolution. 2. The refined request now seeks evidence on very clear and specific points: whether the State terminated the Project (at least in part) due to the withdrawal of a joint venture partner; or whether the State proceeded to terminate the Project despite the continued interest of a willing partner. 3. In addition to contradicting the State's narrative in the Counter-Memorial, the circumstances surrounding the September 2010 termination announcement are relevant and material to the Tribunal's assessment of the (un)reasonableness, arbitrariness and/or proportionality of the State's decision to abandon the Project.

E. Respondent's Comments on the Claimant's Reformulation of the Request	[Respondent's 26 September 2025 submission] The Respondent acknowledges that the request is now made with proper specificity. However, the Respondent reiterates its observations in its original objection: the documents are not relevant and the Claimant's purported justifications do not come close to the required threshold of being material to the outcome of the dispute. [Respondent's 2 October 2025 additional submission] The Tribunal is reminded that there is no factual dispute between the parties as to when or why the Votorantim Agreement was terminated. The agreed date is 30 September 2010. The reason is by operation of clause 11(b), effluxion of time; the parties had not executed the required documentation to progress the project. Please see in this regard from paragraph 202 of the Memorial and paragraphs 157 and 160 of the Counter Memorial. There is no proper basis, therefore, on which to seek to broaden the disclosure process into these corners of the arrangements with Votorantim. As indicated previously (and whether as originally formulated or as now reformulated), Request 106 is simply not relevant. It is noted that the Claimant, when making this Request, failed to draft the Tribunal's attention to this fact or to the relevant paragraphs of the pleadings. The Respondent now does so.
F. Claimant's replies to new Section E	1. The Respondent's objection now rests <i>solely</i> on the alleged lack of relevance and materiality. 2. Its additional submission regarding the timing and basis of the termination of Votorantim's Project Agreement – which it alleges CMEC failed to point out – merely repeats what CMEC has clearly stated in Section B, ¶ 2. This again raises the concern as to whether the Respondent has properly reviewed CMEC's request and supporting rationale, or is doing no more than mechanically resisting. 3. As to relevance and materiality, CMEC reiterates the clear justifications set out in Section B, ¶¶ 3-7 and Section D, ¶¶ 2-3 above. 4. For the Tribunal's ease of reference, CMEC further pulls the following excerpts from the Respondent's Counter-Memorial submissions: Alleged Facts: a. Counter-Memorial, ¶ 158 presents the narrative that "<i>at the time when T&T were considering the future of the</i>

	<i>Project in September 2010: [...] it was <u>critical</u> for the success of the Project for T&T to have a joint venture partner, being one which would provide operating experience and access to markets."</i> (emphasis added) b. Relatedly, the Respondent's witness, Mr Leroy Mayers, states that the State selected Votorantim as the replacement joint venture partner in 2009 precisely because "<i>they had the requisite experience and financial strength and wanted to go downstream. Votorantim also indicated that it wished to deepen its involvement with the Project generally and so it was possible to begin a long-term partnership with them.</i>"¹³ [LM WS, ¶ 103] Asserted Legal Tests: c. <u>In relation to unreasonableness and arbitrariness</u>, the Respondent acknowledges in Counter-Memorial, ¶ 912 that "[u]nreasonable or arbitrary measures mean those which are '<u>not founded in reason or fact</u> but on caprice, prejudice or personal preference'" (emphasis added). Further, the requirement of reasonableness is distinct from, and not to be conflated with, a merit assessment of a respondent State's measure in question: Counter-Memorial, ¶ 914. d. <u>In relation to proportionality</u>, as related to the requirement of reasonableness, the Respondent accepts in Counter-Memorial, ¶¶ 916-917 that a challenged measure must also be reasonable in that "<i>there needs to be an appropriate correlation between the state's public policy objective and the measure adopted to achieve it</i>", which "<i>includes the requirement that the impact of the measure on the investor be proportional to the policy objective sought</i>".¹⁴ 5. In light of these pleadings, it is evident that whether Votorantim remained committed to or interested in the Project, as of the State's decision to abandon it on 8 September 2010, is directly relevant and material to assessing whether the State's termination decision and immediate
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¹³ Votorantim's indication of "*a long-term partnership*" also corroborates Mr Philip Julien's observation in his October 2011 exit report that Votorantim remained interested in an aluminium project with GORTT despite the September 2010 cessation announcement, and at least until February 2011 (see Section B, ¶ 6 above).

¹⁴ In this case, the Respondent's alleged public policy / public welfare objective is to address "*the environmental and health concern that the smelter plant raised*", relying not on any documented analysis but on Mr Anand Ramlogan SC's prior unsupported testimony that the Project (in Phase II) might not be able to comply with the 1 µg/m³ HF emission limit prescribed by the EMA: Counter-Memorial, ¶¶ 644-645. Beyond proportionality, this raises the question of whether there was a legitimate public policy objective – one that was "*founded in reason or fact*" – to be achieved in the first place: see Claimant's Requests Nos. 7, 12, 13, 14, 15, 62, 63, 64.

	public announcement on that date were reasonable and proportionate, or instead arbitrary and premature. The Respondent itself characterised Votorantim's involvement as "<i>critical</i>" to the Project's success. As a concluding observation – and as a matter of fairness and equality – the State cannot simultaneously advance a narrative suggesting the Project's unviability in an attempt to justify its termination, while seeking to exclude documents that may directly contradict or undermine that narrative on the basis that they are irrelevant or immaterial.
G. Decision of the Tribunal	The request is granted.

Document Request No	107
A. Documents or category of documents requested	The final English and Chinese versions of C-0085 , i.e. the feasibility study for the Project as submitted to the China EXIM Bank in or around August 2006.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. CMEC has pleaded the circumstances relating to CMEC/ NEUI's preparation and updates of the feasibility study in Memorial, ¶¶ 99.1-99.6. CMEC specifically explained in fn. 218 that the English version of C-0085, while the latest version remaining in CMEC's archive, was an outdated draft. 2. The Counter-Memorial made no response or comment to these pleadings. However, the Respondent proceeded to cite and rely on the draft English version of the feasibility study in Counter-Memorial, ¶ 54 to support its alleged risks of the Project. 3. As both Parties make references to this feasibility study (albeit to different sections and for different purposes, which is a matter for substantive arguments), the final submission version should come onto the evidentiary record. Reliance on a non-finalised, interim draft would be misplaced. 4. The final version of the feasibility study should exist in both languages and be consistent with each other: the Chinese version was submitted to the China EXIM Bank as part of the financing application, while the corresponding English version was submitted to GORTT for prior approval [Memorial, ¶ 99.5; C-0093, p. 1].
C. Responses and/or objections to document request	T&T agrees to search for, and if found produce, these documents.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's agreement to search for and produce the requested documents. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	108
A. Documents or category of documents requested	The signed version of C-0172 , i.e. CMEC's letter to Alutrint dated 16 March 2009 with Ref. No. CMEC-TD-18-ZL-0903002.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The signed version is sought to ensure the evidentiary record reflects the executed form of the correspondence. 2. The Respondent did not dispute that Alutrint had received this letter and the attached training proposal from CMEC. In fact, Mr Leroy Mayers, witness for the Respondent, specifically stated that "<i>I recall that CMEC submitted a draft preliminary training proposal to Alutrint in March 2009</i>" [LM WS, ¶ 113].
C. Responses and/or objections to document request	Given that neither party disputes the content of the existing version, it is difficult to see how the addition of a signature will be material to the outcome of proceedings. However, as the request is sufficiently focused, T&T agrees to undertake proportionate searches for this document (taking into account that it ought already to be in CMEC's possession) and to produce it if found.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's non-contestation of the authenticity of content in C-0172, and its agreement to search for and produce the signed version. 2. Further, this response confirms that the State has the ability to search for and produce Alutrint's documents (here, a letter to Alutrint) – in the terminology of the IBA Rules, this confirms that the State is in the possession, custody or control of Alutrint documents.
E. Decision of the Tribunal	No order necessary.

Document Request No	109
A. Documents or category of documents requested	The signed version of C-0216 , i.e. the meeting minutes between Alutrint and CMEC dated 22 November 2009 regarding " <i>Building Structure Design Approval and Review Process</i> ".
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The signed version is sought to ensure the evidentiary record reflects the executed form of the minutes. 2. The Respondent did not dispute that Alutrint had executed this set of minutes with CMEC.
C. Responses and/or objections to document request	The response to Request 108 refers.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's non-contestation of the authenticity of content in C-0216, and its agreement to search for and produce the signed version. 2. Further, this response confirms that the State has the ability to search for and produce Alutrint's documents (here, minutes entered into by Alutrint) – in the terminology of the IBA Rules, this confirms that the State is in the possession, custody or control of Alutrint documents.
E. Decision of the Tribunal	No order necessary.

Document Request No	110
A. Documents or category of documents requested	The signed version of C-0220 , i.e. Alutrint Qualification Report on CMEC Chinese Suppliers dated 29 January 2010.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The signed version is sought to ensure the evidentiary record reflects the executed form of the report. 2. The Respondent did not dispute Alutrint having issued this report to CMEC or the procurement related activities reflected in the report.
C. Responses and/or objections to document request	The response to Request 108 refers.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's non-contestation of the authenticity of content in C-0220, and its agreement to search for and produce the signed version. 2. Further, this response confirms that the State has the ability to search for and produce Alutrint's documents (here, a report by Alutrint) – in the terminology of the IBA Rules, this confirms that the State is in the possession, custody or control of Alutrint documents.
E. Decision of the Tribunal	No order necessary.

Document Request No	111
A. Documents or category of documents requested	The signed version of C-0426 , i.e. CMEC's letter to Finance Minister Colm Imbert dated 18 November 2016 with Ref. No. CMECTD-AL-B-DJH1611-276.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The signed version is sought to ensure the evidentiary record reflects the executed form of the correspondence. 2. The Respondent did not dispute having received this letter from CMEC.
C. Responses and/or objections to document request	The response to Request 108 refers.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's non-contestation of the authenticity of content in C-0426, and its agreement to search for and produce the signed version. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

Document Request No	112
A. Documents or category of documents requested	The signed version of C-0455 , i.e. CMEC's letter to Prime Minister Dr Keith Rowley dated 24 July 2018 with Ref. No. CMECTD-AL-B-DJH1807-289.
B. Relevance and materiality according to the requesting party (including references to pleadings, exhibits, witness statements or expert reports)	1. The signed version is sought to ensure the evidentiary record reflects the executed form of the correspondence. 2. The Respondent did not dispute having received this letter from CMEC.
C. Responses and/or objections to document request	The response to Request 108 refers.
D. Replies to objections and request for resolution	1. CMEC takes note of the State's non-contestation of the authenticity of content in C-0455, and its agreement to search for and produce the signed version. 2. No reply is necessary at this stage.
E. Decision of the Tribunal	No order necessary.

**List of Factual Exhibits and Legal Authorities
Submitted During the Document Production Phase**

Factual Exhibits C-0635 to C-0648

Exhibit No	Description	Date
<i>[Factual Exhibits C-0635 to C-0641 were initially sent by the Claimant to the Respondent in connection with the Claimant's Requests for Production of Documents on 4 July 2025.]</i>		
C-0635	Feature Address by Prime Minister Basdeo Panday on the Occasion of the Signing Ceremony for the Project Agreement for an Aluminium Smelter in Trinidad and Tobago (Port of Spain, 12 November 1998)	12 November 1998
C-0636	Trinidad and Tobago Hansard, 14 September 2001 (26th Sitting – 1st Session – 6th Republican Parliament)	14 September 2001
C-0637	Trinidad and Tobago Environmental Management Authority, <i>EMA Appeals Alutrint Judgment</i> , 7 July 2009, http://www.ema.co.tt/cms/index.php?option=com_content&task=view&id=170&Itemid=1 (archived 13 August 2009, last accessed 21 June 2025)	7 July 2009
C-0638	Trinidad and Tobago Ministry of Finance, <i>Alutrint Limited – Financial Statements for the Year Ended 31 December, 2020</i> , https://www.finance.gov.tt/2025/03/11/alutrint-limited-financial-statements-for-the-year-ended-31-december-2020/ (archived 18 March 2025, last accessed 5 June 2025)	11 March 2025
C-0639	Minutes of Site Progress Meeting No. 00027	5 January 2009
C-0640	Minutes of Site Progress Meeting No. 00035	23 March 2009
C-0641	Letter from CMEC to Alutrint	30 August 2007
<i>[Factual Exhibits C-0642 to C-0648 are additional documents in support of the Claimant's Replies to the Respondent's Objections to Requests for Production of Documents, addressing specific points arising from the Respondent's Objections dated 8 August 2025.]</i>		
C-0642	Trinidad and Tobago Cabinet Minute No. 477	4 March 2010
C-0643	ICC Case No. 18799/VRO/AGF/ZF, Tribunal's Ruling on Sural Barbados' Disclosure Requests	27 November 2013
C-0644	11th Cir. Case No. 16-15942, Joint Motion to Dismiss	15 December 2017
C-0645	F. Diaz, <i>Sural Workers Demand Reactivation of the Company and Payment of Accrued Benefits</i> , Latin America News, 3 June 2023	3 June 2023

Exhibit No	Description	Date
C-0646	Sural's website (http://sural.ca/) – error messages as at 2 August 2021 and 21 August 2025	/
C-0647	Trinidad and Tobago Hansard, 14 September 2000 (50th Sitting – 5th Session – 5th Republican Parliament)	14 September 2000
C-0648	Results of Trinidad and Tobago Court Searches	18 & 22 August 2025

Legal Authorities CL-0155 to CL-0169

Exhibit No	Description	Date
[Legal Authorities CL-0155 to CL-0158 were initially referenced, but unsubmitted, by the Respondent in its objections (8 August 2025) to the Claimant's Requests for Production of Documents (4 July 2025). For good order and complete record, the Claimant submits these legal authorities as CL- exhibits.]		
CL-0155	'6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]', in R. Khodykin <i>et al.</i> , <i>A Guide to the IBA Rules on the Taking of Evidence in International Arbitration</i> (2019), pp. 106 - 213	August 2019
CL-0156	'12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]', in R. Khodykin <i>et al.</i> , <i>A Guide to the IBA Rules on the Taking of Evidence in International Arbitration</i> (2019), pp. 407 - 510	August 2019
CL-0157	<i>Waste Management, Inc. v. United Mexican States</i> , ICSID Case No. ARB(AF)/00/3, Procedural Order No. 2 Concerning Disclosure of Documents, 27 November 2002	27 November 2002
CL-0158	<i>Attorney-General v Jonathan Cape Ltd</i> [1976] QB 752	1 October 1975
[Legal Authorities CL-0159 to CL-0169 are additional authorities in support of the Claimant's Replies to the Respondent's Objections to Requests for Production of Documents, addressing specific points arising from in the Respondent's Objections dated 8 August 2025.]		
CL-0159	<i>Clayton/Bilcon v. Government of Canada</i> , PCA Case No. 2009-04, Procedural Order No. 8, 25 November 2009	25 November 2009
CL-0160	<i>Nord Stream 2 AG v. The European Union</i> , PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), 12 July 2021	12 July 2021
CL-0161	'Report on Uniform Guidelines on Privilege in International Arbitration' (with Annexes), IBA Arbitration Committee Task Force on Privilege in International Arbitration	23 February 2024
CL-0162	<i>Gran Colombia Gold Corp. v. Republic of Colombia</i> , ICSID Case No. ARB/18/23, Procedural Order No. 11 on the Parties' Requests for Documents, 28 September 2021	28 September 2021
CL-0163	<i>Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru</i> , ICSID Case No. ARB/19/28, Procedural Order No. 4 on the Production of Documents referred to in the Parties' Privilege Logs, 3 May 2021	3 May 2021
CL-0164	'Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration', 1999 IBA	January 2021

Exhibit No	Description	Date
	Working Party & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force	
CL-0165	<i>WH Holding Ltd & Anor v E20 Stadium LLP</i> [2018] EWCA Civ 2652	30 November 2018
CL-0166	C. Passmore, <i>Privilege</i> (5th edn., 2024), ¶¶ 10-065 - 10-070	2024
CL-0167	<i>Unilever Plc v The Procter & Gamble Company</i> [1999] FSR 849	28 October 1999
CL-0168	<i>Merrill & Ring Forestry L.P. v. Canada</i> , ICSID Case No. UNCT/07/1, Decision of the Tribunal on Production of Documents in Respect of Which Cabinet Privilege Has Been Invoked, 3 September 2008	3 September 2008
CL-0169	Chartered Institute of Arbitrators (CI Arb) Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration	September 2007