

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Juan Carlos Argüello and Ernesto Argüello

v.

Republic of Panama

(ICSID Case No. ARB/25/39)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal

Prof. Alfredo Bullard, President of the Tribunal

Prof. Dr. Stephan Schill, Arbitrator

Prof. Dr. Chiara Giorgetti, Arbitrator

Secretary of the Tribunal

Ms. Laura Arboleda Gutiérrez

13 March 2026

I. INTRODUCTION

1. On 19 December 2025, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 20 January 2026, the Parties commented on Draft PO2.
3. On 27 January 2026, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft procedural order No. 1.
4. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

5. The legal framework applicable to these proceedings is determined by the ICSID Convention and the United States of America and Panama Trade Promotion Agreement signed on 11 July 2007 (“**U.S.-Panama TPA**”), which was approved by Panama on 11 July 2011 and by the United States on 21 October 2011, and entered into force for both parties on 31 October 2012.
6. ICSID Arbitration Rule 66 defines “confidential or protected information” as:

“information which is protected from public disclosure:

(a) by the instrument of consent to arbitration;

(b) by the applicable law or applicable rules;

(c) in the case of information of a State party to the dispute, by the law of that State;

(d) in accordance with the orders and decisions of the Tribunal;

(e) by agreement of the parties;

(f) because it constitutes confidential business information or protected personal information;

(g) because public disclosure would impede law enforcement;

(h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;

(i) because public disclosure would aggravate the dispute between the parties; or

(j) because public disclosure would undermine the integrity of the arbitral process.”

7. U.S.-Panama TPA Article 10.21 establishes the transparency regime applicable to arbitral proceedings instituted under U.S.-Panama TPA.
8. Pursuant to U.S.-Panama TPA Article 10.29 (Definitions), the term “protected information” means “confidential business information or information that is privileged or otherwise protected from disclosure under a [U.S.-Panama TPA] Party’s law.”
9. In accordance with U.S.-Panama TPA Article 10.21.1, and subject to the redaction of information designated as “protected information”, the following documents shall be publicly available:
 - the notice of intent;
 - the notice of arbitration;
 - pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;
 - minutes or transcripts of hearings of the tribunal, where available; and
 - orders, awards, and decisions of the tribunal.
10. Any “protected information” that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedures set out in U.S.-Panama TPA Article 10.21.4, and as supplemented by Section III of this Order.
11. The “protected information” of this arbitral proceeding shall be governed by U.S.-Panama TPA Articles 10.21.3 and 10.21.4, which read as follows:

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.5 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and (d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

12. The Parties agree that in the event of a dispute regarding proposed redactions to the Award, the power to decide such a dispute, including as regards the allocation of costs resulting from such a dispute, shall reside with the former Members of the Tribunal, even if the final Award has been issued and the Tribunal is *functus officio*.
13. The former Members of the Tribunal will be compensated for time spent in the resolution of any disputes in connection with the redaction of confidential information in the Award in accordance with Section 3 of Procedural Order No. 1, with their claims being paid from the case fund administered by ICSID for this proceeding pursuant to the ICSID Administrative and Financial Regulations.¹

III. TRANSPARENCY RULES

14. The Tribunal adopts the following transparency and confidentiality rules governing this proceeding.

¹ As the proceeding will conclude upon dispatch of the Tribunal's Award, any costs incurred after the dispatch of the Award (e.g., arbitrator fees for time spent addressing disputed redactions) will not be considered part of the costs of the proceeding. To ensure the payment of such costs incurred in connection with disputes over redactions of the Award, the Parties agree that ICSID will keep the case trust fund open after the proceeding is concluded and debit the trust fund for any incurred costs. ICSID will close the case trust fund once the arbitrators have submitted their claims for fees relating to the resolution of disputes over redactions of the Award, if any.

A. ORDERS, DECISIONS, AND AWARD (U.S.-PANAMA TPA ARTICLE 10.21(1)(C))

15. ICSID shall publish on its website all orders, decisions and the Award of the Tribunal, with any redactions agreed by the Parties and jointly notified to the Tribunal (or, in the event of a final Award, the Acting Secretary-General) within 70 days after the order, decision or Award is rendered.
16. If the Parties do not agree on a jointly redacted text, either Party shall, within 42 days of receipt of the document referred to in Paragraph 15 above, inform the Secretary of the Tribunal (or, in the event of a final Award, the Acting Secretary-General) who shall refer the order, decision or Award to the Tribunal to decide any disputed redactions. ICSID shall publish the order, decision or Award in accordance with the decision of the Tribunal pursuant to Section E below.

B. WRITTEN SUBMISSIONS (U.S.-PANAMA TPA ARTICLES 10.21(1)(C) AND 10.24)

17. ICSID shall publish the “pleadings, memorials and briefs” (*i.e.*, memorial, counter-memorial, reply and rejoinders) promptly, and in accordance to Section E below, with any and including any redactions agreed to by the Parties or decided by the Tribunal, in accordance with Section E below.²
18. Supporting documents, including exhibits, legal authorities, indexes, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.
19. The Parties may agree that ICSID will publish other written submissions not falling within Paragraph 17 above with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section E below.

C. OPEN HEARINGS (U.S.-PANAMA TPA ARTICLE 10.21(2) AND ARBITRATION RULE 66)

20. Pursuant to U.S.-Panama TPA Article 10.21.2, the Tribunal shall conduct hearings open to the public and shall determine, in consultation with the Parties, the appropriate logistical arrangements. The Parties shall give the Tribunal advance notice prior to referencing protected information at the hearing. The Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of “protected information” under the Treaty or “confidential or protected

² During the First Session, both Parties ratified their consent to publish their written submissions through ICSID’s website, pursuant to Rule 64(1) of the ICSID Rules. The Parties had different positions as to whether such publication should occur “promptly” after each submission or once the award is issued and proceedings are concluded. The Tribunal interprets Art. 10.21 of the U.S.-Panama TPA to include an obligation of the contracting parties to publish their submissions promptly. *See* First Session Recording at 1:44:39 (Counsel for the Claimants: “*The Parties agree that the pleadings, including the Parties’ memorial and briefs should be published by ICSID, but they disagree as to the timing of such publication (...).*”). *See also* First Session Recording at 1:50:00 (Counsel for the Respondent: “*We have proposed to have ICSID to make it public after the award is dispatched*”).

information” under ICSID Arbitration Rule 66 addressed during the hearing at the latest at the pre-hearing organizational conference.

D. TRANSCRIPTS OF HEARING (U.S.-PANAMA TPA ARTICLE 10.21(1)(D))

21. ICSID shall publish transcripts of the hearing, with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section E below.

E. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (U.S.-PANAMA TPA ARTICLES 10.21.3, 10.21.4 AND 10.29, ARBITRATION RULE 66)

22. With respect to publication pursuant to Sections A, B, C and D *above*, any confidential or protected information as defined in U.S.-Panama TPA Article 10.29 and Arbitration Rule 66 that is agreed by the Parties or confirmed as such by the Tribunal (or, in the event of a final Award, by the Acting Secretary-General) shall be protected from disclosure and publication in accordance with the procedure set forth below.
23. Within 14 days from the date of a decision, order or Award, a written submission, or the date of transmittal of a final transcript, a Party (including a Party making the submission) shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of the specific information it considers protected and shall provide proposed redactions.
24. Absent such a notice within the 14-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with U.S.-Panama TPA Article 10.21, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.
25. Within 14 days of receipt of the notice referred to in Paragraph 23, the other Party may raise objections to the proposed redactions. It shall send these objections to the other Party and the Tribunal (or, in the event of a final award, the Acting Secretary-General). It shall also notify the Tribunal (or, in the event of a final Award, the Acting Secretary-General) of any proposed redactions to which it does not object.
26. If no objections are raised within the deadline established in Paragraph 25, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
27. If objections are raised within the deadline established in Paragraph 25, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions and, if they fail to do so, submit the Transparency Schedule set out in Annex A within the same 14-day time period. The procedure shall be as follows:
- The Party seeking redactions shall share with the Party opposing the redactions within 7 days of receipt of the objections the Transparency Schedule with comments included in the following sections: information

sought to be protected from disclosure, legal basis for protection, and comments.

- The Party opposing redactions shall then have the option to withdraw any objections, which shall be promptly notified to the other Party and the Tribunal (or, in the event of a final Award, the Acting Secretary-General).
28. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted by the Party opposing the redactions to the Tribunal (or, in the event of a final Award, the Acting Secretary-General) in the form of the Transparency Schedule set out in Annex A to this Order with its comments included in the following section: Reply by opposing Party. The Tribunal (or, in the event of a final Award, the Acting Secretary-General) shall endeavor to decide all such disputes within 14 days.
29. If the Parties reach an agreement, they shall inform the Tribunal (or, in the event of a final Award, the Acting Secretary-General) and the Tribunal (or, in the event of a final Award, the Acting Secretary-General) will authorize ICSID to publish the document at issue with the agreed redactions. No transparency schedule will be submitted by the Parties.
30. If information is to be redacted from a document in accordance with Paragraphs 26, 27 and 28, the Parties shall provide a redacted version of the document within 7 days of the agreement of the Parties or the decision of the Tribunal (or, in the event of a final Award, the Acting Secretary-General). Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
31. If the Tribunal decides that information filed by a Party for which protection is sought is not protected information and should be published, the Party that filed the document or submission shall be permitted to withdraw all or part of the document from the record within 10 days of the Tribunal's decision as provided for in U.S.-Panama TPA Article 10.21.4(d).

On behalf of the Tribunal,

[Signed]

Prof. Alfredo Bullard
President of the Tribunal
Date: 13 March 2012

ANNEX A TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments (max 200 words)	
Reply by opposing Party (max 200 words)	
Decision	