
International Centre for Settlement of Investment Disputes

In the matter of an arbitration between

The Carlyle Group L.P., Carlyle Investment Management L.L.C., Carlyle
Commodity Management L.L.C., TC Group, L.L.C., TC Group Investment
Holdings, L.P., Celadon Commodities Fund, LP, and Celadon Partners,
LLC

Claimants

and

The Kingdom of Morocco

Respondent

REQUEST FOR ARBITRATION

Weil, Gotshal & Manges LLP
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New York, NY 10153
U.S.A.

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I. INTRODUCTION

1. The Carlyle Group L.P., Carlyle Investment Management L.L.C., Carlyle Commodity Management L.L.C., TC Group, L.L.C., TC Group Investment Holdings, L.P., Celadon Commodities Fund, LP, and Celadon Partners, LLC (collectively, “Claimants”) submit this request for arbitration (the “Request for Arbitration”) to the Secretary General of the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) in accordance with Article 10.15 of the United States – Morocco Free Trade Agreement (the “FTA”) ¹ and Article 36 of the Convention for the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”).
2. Claimants made investments in Morocco after the date of entry into force of the FTA. Starting in or around August 2015, the Kingdom of Morocco (“Respondent” or the “Government”) commenced wrongful actions in breach of Articles 10.5 and 10.6 of the FTA that rendered Claimants’ investments unrecoverable and caused Claimants to suffer losses in excess of US\$400 million.
3. As further described below, starting in early 2015, Claimants made a series of investments in Morocco through investment agreements with the Société Anonyme Marocaine de l’Industrie du Raffinage (“SAMIR”), a corporation organized under the laws of Morocco, that ultimately totaled more than US\$400 million. Starting in or around August 2015, and continuing into the Fall of 2015, Respondent seized assets of SAMIR, including storage and refinery facilities and also bank accounts, which Respondent knew or should have known respectively contained commodities (consisting of crude oil and other petroleum products) and cash belonging to Claimants and then: (i) swept SAMIR’s bank accounts, which contained cash proceeds from sales of commodities that took place prior to August 2015, which proceeds were owed—but had not yet been remitted—to Claimants by SAMIR; and (ii) instructed parties that had purchased commodities belonging to Claimants prior to that time to pay SAMIR (rather than Claimants) for Claimants’ outstanding accounts receivable.

¹ See Authority CA-1; see *also* statement by Weil, Gotshal & Manges LLP regarding the documents attached to this Request for Arbitration, Exhibit C-1.

Respondent additionally directed that SAMIR employees sell commodities in SAMIR's storage facility that were owned by Claimants into the local market. Respondent has neither returned any of the commodities or cash proceeds owned by Claimants, nor offered any compensation or restitution to Claimants for their losses.

II. THE PARTIES

A. Claimants

4. Claimants are The Carlyle Group L.P., Carlyle Investment Management L.L.C. ("CIM"), Carlyle Commodity Management L.L.C. ("CCM"), TC Group, L.L.C., TC Group Investment Holdings, L.P., Celadon Commodities Fund, LP, and Celadon Partners, LLC.

5. Claimants' contact information is as follows:

The Carlyle Group L.P.
Attention: Jeffrey Ferguson
1001 Pennsylvania Ave., N.W.
Suite 220 South
Washington, D.C. 20004

6. For purposes of these proceedings, Claimants' common mailing address of record shall be deemed to be those of its counsel of record, Weil, Gotshal & Manges LLP, and all communications to Claimants shall be addressed to:

Eric Ordway
Lori Pines
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
U.S.A.
eric.ordway@weil.com
lori.pines@weil.com

7. The Carlyle Group L.P., TC Group Investment Holdings, L.P., and Celadon Commodities Fund, LP, are all limited partnerships organized under the laws of the state of Delaware in the United States.

8. CIM, CCM, TC Group, L.L.C., and Celadon Partners, LLC, are all limited liability companies organized under the laws of the state of Delaware in the United States.
9. The Carlyle Group L.P. is the ultimate parent of Claimants.
10. Celadon Commodities Fund, LP, owns 99.96% of the participating shares in Celadon Commodities, Ltd., a Cayman Limited Company, which, in turn, owns 100% of VMF Special Purpose Vehicle SPC – VMF Q1 Segregated Portfolio (“VMF”), a Cayman segregated portfolio company.
11. At all relevant times, CCM acted as the exclusive investment adviser to Celadon Commodities, Ltd., Celadon Commodities Fund LP, and VMF, and thus exercised control over the investment and other business decisions made by these entities.
12. Celadon Commodities Fund, LP’s sole general partner is Celadon Partners, LLC, and its limited partnership interests are owned 97.06% by TC Group, L.L.C. and 2.94% by TC Group Investment Holdings, L.P.
13. Starting in early 2015, Claimants made two dozen separate investments in Morocco with respect to physical stocks of crude oil and/or refined petroleum products, which physical stocks Claimants stored in SAMIR’s storage tanks in Mohammedia, Morocco.²
14. Respondent’s unlawful actions ultimately resulted in a complete loss of sixteen (16) of Claimants’ investments in Morocco in excess of US\$400 million.

B. Respondent

15. Respondent is the Kingdom of Morocco. Respondent’s contact information is:

His Excellency, Mr. Saad-Eddine El Othmani
Prime Minister of Morocco

² References to “Claimants” in this Request for Arbitration should be understood as referring to Claimants collectively or individually, including, where applicable, through their ownership and control of CCM and/or VMF.

Département du Chef du Gouvernement
Palais Royale Touarga
Rabat
Kingdom of Morocco

16. Respondent has been a Contracting State to the ICSID Convention since October 11, 1965 and remains a Contracting State as of the date of this Request for Arbitration.³ Respondent continues to be bound by and subject to the FTA, and Claimants are entitled under the FTA and the ICSID Convention to bring this arbitration against Respondent for its numerous breaches of the FTA.

III. THE PARTIES' CONSENT TO THE JURISDICTION OF THE CENTRE

A. Claimants' Consent

17. Claimants are organized under the laws of the State of Delaware, United States of America, which is a party to the ICSID Convention, and Claimants have consented to the Centre's jurisdiction by filing this Request for Arbitration.⁴

B. Respondent's Consent

18. Article 10.15.3 of the FTA provides that "a claimant may submit a claim [for arbitration] . . . (a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention."⁵

³ Respondent signed the Convention on October 11, 1965 and ratified it on May 11, 1967. The Convention entered into force with respect to Respondent on June 10, 1967. Information available at the ICSID website at: <https://icsid.worldbank.org/en/Pages/about/MembershipStateDetails.aspx?state=ST94#> (last visited on 07/30/2018). Attached as Authority CA-2.

⁴ The United States signed the Convention on August 27, 1965 and ratified it on June 10, 1966. The Convention entered into force with respect to the United States on October 14, 1966. Information available at the ICSID website at: <https://icsid.worldbank.org/en/Pages/about/MembershipStateDetails.aspx?state=ST181#> (last visited on 07/30/2018). Attached as Authority CA-3.

⁵ The FTA entered into force on January 1, 2006. See, Authority CA-4.

19. As noted in paragraph 16 of this Request for Arbitration, Respondent is a Contracting State and is a party to the ICSID Convention. Further, pursuant to Articles 10.15 and 10.16 of the FTA, Respondent has consented to the submission of claims arising from the FTA to arbitration before ICSID.

IV. SUMMARY OF FACTS

A. Claimants' Investments in Morocco

20. Claimants made numerous investments in Morocco and have suffered more than US\$400 million in damages due to Respondent's wrongful conduct. Claimants made these investments pursuant to investment agreements with SAMIR, a publicly listed entity organized and existing under the laws of Morocco. SAMIR—headquartered in Mohammedia, Morocco—is the only crude oil refining and processing facility within Respondent's territory.
21. In the fall of 2014, representatives of Claimants and SAMIR began discussions regarding possible investments by Claimants in Morocco that would be beneficial to Claimants, SAMIR, and Respondent. The parties contemplated investments by Claimants in physical stocks of crude oil and/or refined petroleum products in Morocco, with an expected return in the form of an investment premium to be paid by SAMIR. At the same time, this contemplated arrangement was to provide SAMIR with ready access to physical commodities if it subsequently purchased such commodities from Claimants as described below. This contemplated investment arrangement also stood to benefit Respondent by providing the only refinery within its territory with raw commodities so that it could supply the local market with refined petroleum products (e.g., diesel, gasoil, fuel oil, etc.). Specifically, the parties contemplated that:
- a. there would be the purchase by Claimants of physical stocks of crude oil and/or refined petroleum products;
 - b. legal ownership of and title to such commodities would be held by Claimants;
 - c. Claimants would store its commodities in SAMIR's storage tanks in Mohammedia, Morocco pursuant to an arrangement

whereby SAMIR agreed to act as custodian of Claimants' property;

- d. subsequently, Claimants could require SAMIR to purchase Claimants' commodities from Claimants at a fixed purchase price plus the accrued investment premium owed to Claimants with respect thereto;
 - e. subsequently, SAMIR could also request to purchase Claimants' commodities from Claimants;
 - f. if Claimants consented to such request, then SAMIR would pay Claimants a fixed purchase price for such commodities plus the accrued investment premium owed to Claimants with respect thereto; and
 - g. upon (and only upon) payment by SAMIR to Claimants would title to such specific commodities purchased by SAMIR transfer from Claimants to SAMIR.
22. Under these contemplated arrangements between Claimants and SAMIR, SAMIR could access such commodities for its benefit only after it had paid Claimants for such commodities (including both the purchase price and the accrued investment premium owed to Claimants).
23. Claimants and SAMIR understood, agreed, and intended that legal title to Claimants' commodities would remain with Claimants until and unless SAMIR purchased Claimants' commodities from Claimants in accordance with the investment agreements (discussed below).
24. Because of the nature of Claimants' investments, as well as Morocco's currency control restrictions, the approval of Morocco's Office des Changes (the "Foreign Exchange Office")—i.e., an official agency of Respondent—was required before SAMIR could enter into the investment agreements with Claimants.
25. During late 2014 and early 2015, in connection with efforts to obtain the requisite approvals from Respondent, representatives of SAMIR met in person and engaged in correspondence with representatives of the Foreign Exchange Office regarding the proposed investment

agreements and the investments in Morocco by Claimants contemplated thereby.

26. During this period, Claimants' representatives worked with representatives of SAMIR to provide the Foreign Exchange Office with the information Respondent requested regarding the investment agreements and the structure of the contemplated investments by Claimants. On December 15, 2014, representatives of SAMIR informed Claimants that the Foreign Exchange Office had requested additional information about the investment agreements and the contemplated investments by Claimants. Representatives of SAMIR explained to Claimants that the Foreign Exchange Office would not approve SAMIR's entry into the investment agreements (discussed below) without such additional information. Claimants sent to SAMIR the additional information requested by the Foreign Exchange Office, which additional information SAMIR then furnished to Respondent.
27. On January 16, 2015, the Foreign Exchange Office approved SAMIR's entry into the investment agreements with Claimants. In the letter granting such approval, the Foreign Exchange Office expressly stated that, in accordance with the terms of the investment agreements, title to Claimants' commodities would remain with Claimants until and unless SAMIR purchased such commodities from Claimants in accordance with the investment agreements, including the applicable investment confirmation, by paying Claimants the agreed upon purchase price for such commodities plus the accrued investment premium owed to Claimants with respect thereto.
28. The understanding that title to Claimants' commodities was to remain with Claimants was also reaffirmed by a member of SAMIR's board of directors in a confidential affidavit obtained by Claimants (the "Confidential Affidavit"),⁶ which will be submitted as part of the evidence in this arbitration.
29. Upon obtaining Respondent's approval for entry into the investment agreements, Claimants and SAMIR entered into a master investment

⁶ The information contained in the Confidential Affidavit that is referenced in this Request for Arbitration should be treated as confidential. After the tribunal in this case has been constituted, Claimants will seek a protective order from the tribunal to ensure confidential treatment of such information in the future.

agreement (as amended and restated thereafter, the “MCTA”) through VMF (an entity owned and controlled by Claimants) pursuant to which Claimants would invest in crude oil and/or refined petroleum products (“Claimants’ Commodities”) in Morocco. Claimants’ Commodities would be stored in SAMIR’s storage tanks in Mohammedia, Morocco. Subsequently, subject to Claimants’ consent, SAMIR could purchase Claimants’ Commodities from Claimants by paying Claimants the agreed upon purchase price for such commodities, including the accrued investment premium owed to Claimants with respect thereto. Following such payment by SAMIR to Claimants, SAMIR could use the commodities it purchased from Claimants in its refining and related business operations.

30. The MCTA served as a “framework” investment agreement that established the general terms and conditions upon which Claimants agreed to invest in Morocco. The specific terms of each individual investment (i.e., each separate purchase by Claimants of a specific stock of crude oil and/or refined petroleum products) were set forth in a separately executed investment confirmation (“Investment Confirmation”). Each Investment Confirmation affirmed investment details such as: (i) the specific type (e.g., crude oil or feedstocks) and the specific amount (e.g., number of barrels) of physical commodities to be acquired by Claimants; (ii) the purchase price paid by Claimants for such physical commodities; (iii) the price at which Claimants could subsequently require SAMIR to purchase such physical commodities from Claimants; and (iv) the investment premium to be paid to Claimants in connection with the applicable Investment.
31. Claimants and SAMIR also executed a commitment letter in which they committed to engage in commodities investments for at least three years (the “Commitment Letter”).
32. On or about January 16, 2015, Claimants and SAMIR entered into a commodities storage agreement (as amended and restated thereafter, the “Storage Agreement”). The Storage Agreement set forth SAMIR’s express undertakings to preserve and protect Claimants’ Commodities that Claimants stored in SAMIR’s storage tanks in Mohammedia, Morocco. The MCTA, each of the Investment Confirmations, the Storage Agreement, the Commitment Letter, and other related documentation are referred to herein collectively as the “Investment Agreements.”

33. The Investment Agreements provide that ownership of and title to Claimants' Commodities would remain exclusively with Claimants unless and until such time as Claimants expressly agreed to sell Claimants' Commodities to SAMIR in exchange for the payment by SAMIR of the agreed-upon purchase price therefor plus the accrued investment premium owed to Claimants.
34. The MCTA expressly provides, among other things, that Claimants are "the owner[s] of Commodities unless and until such time as the Commodities [we]re sold to [SAMIR] pursuant to Section 3(d) [of the MCTA]" (§ 9).
35. The Storage Agreement expressly provides, among other things, that:
 - a. Claimants "ha[ve] full exclusive title (propriété) of the Commodities," and that "title to Commodities w[ould] not pass to [SAMIR] in any circumstances" unless and until they were purchased from Claimants by SAMIR (§ 3(c));
 - b. SAMIR was prohibited from "us[ing] the Commodities (§ 3(b));
 - c. SAMIR could not dispose of Claimants' Commodities without obtaining Claimants' prior, explicit approval (§ 9.2(b)); and
 - d. SAMIR agreed "to act as [a] non-remunerated custodian (dépositaire) . . . with respect to the Commodities that [we]re in its custody, in accordance with the instructions received from [Claimants]" (Annex 1, § 1(b)).
36. Generally, Claimants made investments under the Investment Agreements ("Investments") as follows:
 - a. after identifying a supplier of crude oil and/or refined petroleum products, SAMIR and Claimants would prepare an Investment Confirmation setting forth the specific details of the Investment, including the type and amount of commodity to be purchased by Claimants, the purchase price and the purchase date;
 - b. if mutually agreeable, SAMIR and Claimants would sign the applicable Investment Confirmation;

- c. Claimants would then deposit the purchase price for the identified commodities with an internationally recognized bank and cause an international letter of credit in such amount to be issued for the benefit of the supplier of such commodities;
 - d. upon delivery by the supplier of such commodities at the port in Mohammedia, Morocco, SAMIR would transfer such commodities from the delivery vessel to its storage tanks, whereupon SAMIR was required to preserve and protect such commodities for Claimants' exclusive benefit in accordance with the Storage Agreement;⁷
 - e. the supplier would draw on the letter of credit in accordance with the documentary requirements set forth in the letter of credit;
 - f. under the MCTA, Claimants had the option (but not the obligation) to require SAMIR to purchase Claimants' Commodities at a specified future date at a fixed price, plus the accrued investment premium owed to Claimants as of such date; and
 - g. under the MCTA, SAMIR could request Claimants to sell to SAMIR Claimants' Commodities, though Claimants were not obligated to accommodate such a request.
37. Between February 4, 2015, and early August 2015, Claimants made a series of separate Investments in crude oil and/or refined petroleum products in Morocco, each such Investment evidenced by an executed Investment Confirmation.
38. Over the course of 2015, SAMIR contacted the Foreign Exchange Office numerous times in connection with the Investment Agreements and Claimants' Investments to confirm its authorization with respect to the Investment Agreements and Claimants' Investments. Thus, Respondent was clearly aware after it approved SAMIR's entry into the Investment Agreements in January 2015 that Claimants were

⁷ As noted in paragraph 35(c), SAMIR was prohibited by the Storage Agreement (§ 9.2(b)) from disposing of Claimants' Commodities without their explicit consent.

continuing to make Investments in Morocco pursuant to which Claimants would obtain title to commodities stored at SAMIR's facility.

39. Some of these Investments were completed pursuant to the terms of the Investment Agreements, with SAMIR ultimately purchasing Claimants' Commodities for the agreed upon price and accrued investment premium. However, a total of sixteen (16) of Claimants' Investments—pursuant to which Claimants had acquired 959,999 MTE (metric ton equivalents) of crude oil and/or refined petroleum products in the aggregate, at a cost basis of more than US\$400 million in the aggregate—were open and outstanding when Respondent commenced its wrongful conduct (discussed below). It is these sixteen (16) open and outstanding Investments made by Claimants (and related Investment Confirmations) that are the subject of this Request for Arbitration.
40. In the Confidential Affidavit, the SAMIR board director verified that substantial amounts of Claimants' Commodities were stored by Claimants in SAMIR's storage tanks in Mohammedia, Morocco, during the spring and summer of 2015—i.e., before the wrongful conduct described below.

B. Respondent's Actions in Violation of the FTA

41. Beginning in or around August 2015 and continuing well into 2016, and without prior notice to Claimants or an opportunity for Claimants to object, Respondent took the following actions at various points in time in clear violation of the FTA (collectively, the "Wrongful Conduct").
 - a. Respondent froze SAMIR's bank accounts and prevented SAMIR from purchasing Claimants' Commodities from Claimants as contemplated by the Investment Agreements.
 - b. Respondent swept all or substantially all cash from SAMIR's bank accounts, a substantial portion of which constituted cash proceeds from prior sales of Claimants' Commodities, which cash proceeds SAMIR owed to Claimants but had not yet transferred to them.
 - c. Respondent seized control of SAMIR's refining and storage facilities and directed SAMIR personnel to sell the commodities in SAMIR's storage tanks to local Moroccan distributors. A

substantial portion of such commodities sold to local Moroccan distributors at Respondent's direction constituted Claimants' Commodities.

- d. Respondent instructed the local Moroccan distributors to pay Respondent for their purchases of commodities from SAMIR (i.e., to send payment for such commodities directly to Respondent and not to SAMIR).
42. In addition to engaging in the above Wrongful Conduct, Respondent also took steps that prevented a recapitalization or restructuring of SAMIR. Specifically, after Respondent commenced the Wrongful Conduct, the non-Moroccan controlling shareholder of SAMIR's parent company, Mohammed Hussein al Amoudi, made a proposal to Respondent to recapitalize SAMIR with several hundred million dollars in capital, an infusion that would have permitted SAMIR's refinery to continue operating and thus could have enabled Claimants to recover some or all of their Investments. However, Respondent never accepted this proposal. The Moroccan press speculated that if SAMIR were to be liquidated, the refinery likely would end up in the hands of Agriculture Minister Akhannouch's Afriquia. Indeed, Respondent's Prime Minister, Abdellah Benkirane, told the Moroccan House of Councillors in January 2016 that "the appropriate authorities" had made a "unanimous" decision to "end" foreign control of SAMIR. These facts indicate that Respondent's seizure of Claimants' property was not accidental, but rather reflected Respondent's preference that control of SAMIR be transferred to a domestic owner.
 43. Because of the nature of the Investment Agreements, of which Respondent was fully aware, a significant percentage of the commodities held in SAMIR's storage tanks in August 2015 were, in fact, owned by Claimants in accordance with the Investment Agreements approved by Respondent. Similarly, a significant percentage of the cash in SAMIR's bank accounts represented the proceeds of sales of Claimants' Commodities that belonged to Claimants.
 44. The former member of SAMIR's board of directors confirms in the Confidential Affidavit that, in August 2015, a portion of: (i) the commodities in SAMIR's tanks consisted of Claimants' Commodities;

and (ii) the cash in SAMIR's bank accounts were proceeds from prior sales of Claimants' Commodities.⁸

45. Indeed, in the fall of 2015—after the Wrongful Conduct commenced—SAMIR reminded Respondent that much of the commodities stored in its tanks were Claimants' Commodities and that many of the frozen funds were the proceeds of sales of Claimants' Commodities.
46. Claimants sought in various dealings with representatives of SAMIR to recover on their Investments, but were told that SAMIR could not immediately repay Claimants or otherwise immediately perform under the Investment Agreements because of Respondent's Wrongful Conduct.
47. On October 1, 2015, Claimants and SAMIR—in recognition that Respondent's actions inhibited SAMIR's compliance with the Storage Agreement and deadlines set forth in the MCTA—entered into a forbearance agreement (the "Forbearance Agreement") in which Claimants agreed to refrain from taking immediate legal action in exchange for SAMIR's written reaffirmation of Claimants' ownership of Claimants' Commodities and right to cash proceeds from the sale of Claimants' Commodities, as well as SAMIR's agreement to commence performing under the Investment Agreements as soon as Respondent permitted it to do so. In the Forbearance Agreement, SAMIR acknowledged, among other things, that:
 - a. Respondent "froze SAMIR's bank accounts on or about August 7, 2015," which "prevented SAMIR from withdrawing funds from its bank accounts in the Kingdom of Morocco";
 - b. Respondent "directly or indirectly, and from time to time, expropriated Commodities . . . and required SAMIR to release Commodities . . . from SAMIR's custodial possession in order to meet the needs of the Kingdom of Morocco";

⁸ As explained *infra* in Paragraph 77, the Confidential Affidavit also states that while Respondent justified its August 2015 actions against SAMIR based on an alleged tax dispute, SAMIR was not in default on any of its tax obligations to Respondent at the time such actions were taken.

- c. Claimants' Commodities were "the property of [Claimants]" and SAMIR "does not have any ownership or property right, title or interest in or to Commodities"; and
 - d. As of October 1, 2015, the balance owed to Claimants by SAMIR was in excess of US\$400 million.
48. During a December 2015 meeting with Respondent's representatives, Respondent's Minister of Finance admitted that Claimants' money was likely to have been in SAMIR's bank accounts.
49. Although Respondent clearly knew that a substantial portion of the cash proceeds contained in SAMIR's bank accounts represented the proceeds of Claimants' Commodities (and thus belonged to Claimants), Respondent has not yet paid any compensation or restitution to Claimants relating to their Investments in Morocco.

V. JURISDICTION AND PROCEDURAL REQUIREMENTS

50. Claimants submit their dispute with Respondent to ICSID in accordance with Article 10 of the FTA and Article 25 of the ICSID Convention.
51. Article 10 of the FTA "applies to measures adopted or maintained by a Party relating to . . . (a) investors of the other Party; (b) covered investments; and (c) with respect to Articles 10.8 and 10.10, all investments in the territory of the Party." (Article 10.1)
52. Respondent is a party to the FTA and Respondent's Wrongful Conduct took place within the territory of Respondent.
53. Schedule C to Article 10 of the FTA defines an "investor of a Party" to mean "a Party or state enterprise thereof, or a national or an enterprise of a Party, that concretely attempts to make, is making, or has made an investment in the territory of the other Party[.]" An "enterprise of a Party" is defined in Schedule C to Article 10 of the FTA to mean "an enterprise constituted or organized under the law of a Party[.]" (Article 10.27)
54. Claimants are organized under the laws of the State of Delaware in the United States, and the United States is a Party to the FTA. Thus,

each Claimant is an “enterprise of a Party” subject to the protections of Article 10 of the FTA.

55. Article 10 of the FTA applies, “with respect to a Party, [to] an investment (as defined in Article 10.27 (Investment – Definitions)) in its territory of an investor of the other Party in existence on the date of entry into force of this Agreement or established, acquired, or expanded thereafter.” (Article 1.3).
56. Article 10.27 of the FTA provides that an “investment” means “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk” and provides that “[f]orms that an investment may take include: (a) an enterprise; (b) shares, stock, and other forms of equity participation in an enterprise; (c) bonds, debentures, other debt instruments, and loans; (d) futures, options, and other derivatives; (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; (f) intellectual property rights; (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”
57. Here, as described above, Claimants and SAMIR entered into the Investment Agreements, which set the framework for their long-term Investments in Morocco. As described above, in connection with each Investment, Claimants: (i) committed capital to Morocco (i.e., the amount of the letter of credit issued to purchase Claimants’ Commodities); (ii) for a significant duration (i.e., as shown in the Investment Agreements, Claimants intended to make Investments for at least three years); (iii) expected a gain or profit (i.e., the difference between the price at which they acquired Claimants’ Commodities and the price at which they sold them to SAMIR or another purchaser); and (iv) assumed the risk of the loss or diminution in value of Claimants’ Commodities—and indeed lost the entire amount of 16 of their Investments in Morocco due to the Wrongful Conduct. The Investments also met several of the illustrative examples of investments set forth in Article 10.27 of the FTA, including because they involved “futures, options, and other derivatives” as described in paragraph 36 above.

58. All of Claimants' Investments were made after the entry into force of the FTA. Through this series of Investments, Claimants came to invest more than US\$400 million in Morocco.
59. Article 10.15.2 of the FTA provides that, "at least 90 days before submitting any claim to arbitration . . . , a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration."
60. Article 10.15.3 of the FTA provides that an arbitration may not be brought until "six months have elapsed since the events giving rise to the claim."
61. On February 5, 2018 (i.e., more than 90 days prior to the date of this Request for Arbitration), Claimants notified Respondent of a dispute regarding Respondent's Wrongful Conduct and reserved their right to bring an arbitration before ICSID in the event that the parties could not resolve their dispute.
62. Since February 5, 2018, the parties have engaged in communications to resolve this dispute but have not reached a settlement.
63. As detailed above, more than six months **have** elapsed between the events giving rise to this claim and Claimants' filing of this request for arbitration.
64. Thus, Claimants meet all jurisdictional requirements necessary to submit the present dispute to arbitration under the FTA.
65. The jurisdiction of the Centre is governed by Article 25(1) of the ICSID Convention, which provides that:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the Parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

66. As noted above, both the United States and Respondent are contracting states to the ICSID Convention, and Respondent consented in the FTA to the submission of disputes arising under the FTA to the Centre.
67. This Request for Arbitration presents a legal dispute arising directly out of an investment between nationals of a Contracting State (i.e., Claimants) and a Contracting State (i.e., Respondent).
68. To qualify as a “legal dispute” for the purposes of Article 25(1) of the ICSID Convention, a dispute “must concern the existence or scope of a legal right or obligation or the nature or extent of the reparation to be made for breach of a legal obligation.”
69. As described herein, Respondent assumed a number of binding international legal obligations with respect to Claimants and their Investments in the FTA. This dispute concerns Respondent’s breaches of these binding international legal obligations, and its failure to pay compensation for the injury that its actions have caused Claimants. This case thus satisfies the requirement of the existence of a legal dispute between the Parties.
70. The ICSID Convention does not define the term “investment.” However, because Claimants’ Investments fall well within the definition of an investment set forth in the FTA, and meet all the characteristics of an investment under the ICSID Convention (as explained in paragraph 57), Claimants have made an "investment" for the purposes of the FTA and the ICSID Convention.
71. All formalities required by the FTA and ICSID’s rules have been satisfied. Claimants have taken all necessary internal actions to authorize this Request for Arbitration, have granted a Power of Attorney to the undersigned,⁹ and have paid the lodging fee by wire transfer.¹⁰

⁹ A copy of Claimants’ powers of attorneys and necessary authorizations are attached as Exhibit C-2.

¹⁰ A copy of the wire transfer order to ICSID is attached as Exhibit C-3.

72. Claimants are not a party to any other proceedings in relation to the legal claims set forth in this Request for Arbitration and, concurrent with the lodging of this Request for Arbitration, are waiving their right to initiate any other such proceedings.

VI. RESPONDENT’S MEASURES BREACHED THE FTA

73. Article 10.5 of the FTA provides as follows:

ARTICLE 10.5: MINIMUM STANDARD OF TREATMENT [FN1]¹¹

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

...

¹¹ Footnote 1 reads “Article 10.5 shall be interpreted in accordance with Annex 10-A.”

4. Notwithstanding Article 10.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in paragraph 4, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.6.2 through 10.6.4, *mutatis mutandis*.

74. Article 10.6 of the FTA provides as follows:

ARTICLE 10.6: EXPROPRIATION AND COMPENSATION
[FN2]¹²

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

¹² Footnote 2 reads as follows: "Article 10.6 shall be interpreted in accordance with Annexes 10-A and 10-B."

(d) in accordance with due process of law and Article 10.5.1 through 10.5.3.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

75. On or about August 2015, Respondent commenced certain of the Wrongful Conduct and repeatedly breached its obligations to Claimants under Articles 10.5 and 10.6 of the FTA. Respondent continued such breaches well into 2016.

76. Respondent breached its duty under Article 10.5 of the FTA to “accord to [Claimants’] investments treatment in accordance with customary international law, including fair and equitable treatment.”

77. As noted above, on or about August 7, 2015, and without any prior notice to Claimants or opportunity to object, Respondent (through its Customs Administration) froze SAMIR’s bank accounts, purportedly because SAMIR failed to pay taxes it owed to Respondent, though—according to the Confidential Affidavit—SAMIR was not in default on any of its payment obligations to Respondent at that time. As representatives of SAMIR informed Claimants at the time, they could not return money belonging to Claimants because SAMIR’s accounts were “totally frozen and not under [its] control,” but rather under Respondent’s control. At some time thereafter, Respondent swept SAMIR’s bank accounts of all cash, a portion of which represented the proceeds from Claimants’ Investments.

78. Though Respondent knew the nature of the Investment Agreements—and thus the true ownership of Claimants’ Commodities and the fact that SAMIR’s bank accounts contained proceeds from Claimants’ Investments—it did nothing to take these

critical facts into account when it commenced its Wrongful Conduct against Claimants.

79. After freezing SAMIR's bank accounts, Respondent began to exercise control over SAMIR and its storage and refinery facilities, and ultimately demanded that SAMIR employees sell commodities on hand (including Claimants' Commodities) into the local market, notwithstanding that the Investment Agreements required Claimants' consent to such disposition. Respondent kept the proceeds of such sales entirely for itself and did not remit them to Claimants as required by the Investment Agreements.
80. Given the nature of the Investment Agreements, which—based on prior communications with SAMIR—Respondent understood to result in Claimants (and not SAMIR) having title to Claimants' Commodities, a significant percentage of the commodities in SAMIR's storage facility as of August 2015 were Claimants' Commodities, not SAMIR's commodities. Nevertheless, and despite its knowledge of Claimants' ownership interest in Claimants' Commodities, when Respondent seized SAMIR's refinery, it failed to take any actions whatsoever to ascertain whether the commodities it directed SAMIR's employees to sell were Claimants' Commodities or SAMIR's commodities. Indeed, Respondent did not even notify Claimants that it was seizing commodities from SAMIR's storage facility or provide Claimants with an opportunity to object to its seizure of Claimants' Commodities, and has never returned any of Claimants' Commodities.
81. Respondent cannot claim ignorance of the fact that Claimants' Commodities and cash were within SAMIR's possession in August 2015. Notwithstanding that the Foreign Exchange Office already was aware of (and indeed had approved) the structure of the Investments and SAMIR's entry into the Investment Agreements, SAMIR took the additional step of reminding Respondent about Claimants' ownership of Claimants' Commodities and cash after Respondent commenced the Wrongful Conduct in August 2015. And in the fall of 2015, SAMIR yet again informed Respondent of the ramifications of its actions on Claimants' Investments. But, Respondent refused to acknowledge its wrongful seizure, conversion, and theft of Claimants' Commodities and cash.

82. Respondent's actions described above lacked transparency, were arbitrary, and grossly unfair, as well as inconsistent with Claimants' reasonable and legitimate expectations at the time it made its Investments in Morocco. These actions at a minimum violated Respondent's minimum standard of treatment obligations under Article 10.5 of the FTA.
83. In addition to the breaches of Article 10.5 of the FTA discussed above, Respondent also breached its duty under Article 10.6 of the FTA not to "expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization" without "payment of prompt, adequate, and effective compensation" and without "due process of law."
84. Following its freeze of SAMIR's bank accounts, Respondent seized the assets at SAMIR's refining facilities and directed SAMIR's management and employees to sell petroleum products (including Claimants' Commodities) into the Moroccan market. As representatives of SAMIR told Claimants, Respondent expropriated Claimants' Commodities to "supply[] the country," supposedly for reasons of "strategic and national security." This is also confirmed in the Confidential Affidavit, which states that Respondent "forced [SAMIR] employees to allow assets to leave the refinery" and "sell petroleum products, which included Carlyle's Commodities, into the local Moroccan market."
85. Respondent never obtained Claimants' approval to sell Claimants' Commodities and kept the proceeds from such sales for itself. Therefore, Respondent substantially deprived Claimants of the economic use and enjoyment of its investment in Morocco without compensation.
86. Respondent thus violated the FTA's prohibition of expropriation set forth in Article 10.6 of the FTA.
87. But for the actions of Respondent described above, and as recognized by SAMIR in the Forbearance Agreement, Claimants would have recovered some or all of the more than US\$400 million they invested in Morocco.

VII. CONSTITUTION OF THE ARBITRAL TRIBUNAL

88. Consistent with Article 10.18.1 of the FTA, Claimants request that the Centre establish a tribunal consisting of three arbitrators, with one appointed by each party, and with the third—the President of the Tribunal—appointed by agreement of the parties or, failing such agreement, by the Secretary-General of the Centre.
89. In accordance with Article 10.15.6 of the FTA, Claimants hereby appoint Horacio Grigera Naón, a national of Argentina, to serve as arbitrator in this arbitration. Dr. Grigera Naón has confirmed to counsel that he is and shall remain impartial and independent of the parties during the pendency of this arbitration.
90. Dr. Grigera Naón's contact information is as follows:
- Dr. Horacio Grigera Naón
5224 Elliott Road
Bethesda, Maryland 20816 U.S.A.
91. Pursuant to ICSID Arbitration Rule 22, Claimants select English as the language to be used in the proceeding.
92. Claimants request that the arbitration take place in Washington, D.C.

VIII. SUBMISSION

93. On the basis of the above information, Claimants request that the Secretary-General of the Centre:
- a. acknowledge receipt of this Request for Arbitration, pursuant to Rule 5 of the Institution Rules;
 - b. transmit a copy of this Request for Arbitration and its accompanying documentation to Respondent; and
 - c. in accordance with Rule 6(1) of the Institution Rules, register the Request for Arbitration as soon as possible and, on the same date, notify the Parties of the registration.

IX. RESERVATION OF RIGHTS

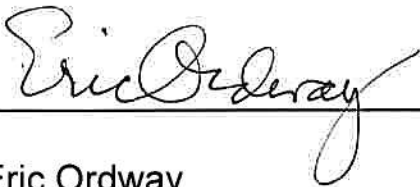
94. Claimants reserve their right to state their claim in full at the appropriate procedural juncture, including a full quantification of damages and including by means of the pleadings, argument, and presentation of evidence contemplated by Rules 31 and 32 of the Arbitration Rules adopted in accordance with the ICSID Convention.
95. This Request for Arbitration is without prejudice to the rights of Claimants to pursue any other remedies available to them against parties other than Respondent for the economic loss they have suffered in connection with their Investments, recognizing that international tribunals will take due account of the need to avoid double recovery for the same economic loss.

X. REQUEST FOR RELIEF

96. As a consequence of Respondent's Wrongful Conduct, Claimants respectfully request an award in their favor:
 - a. Finding that Respondent has breached its obligations under the FTA;
 - b. Directing Respondent to pay damages in an amount to be proven at the hearing, but which Claimants presently estimate to be in excess of US\$400 million through the date of a future award;
 - c. Directing Respondent to pay interest and Claimants' share of taxes on all sums awarded;
 - d. Directing Respondent to pay Claimants' costs associated with these proceedings, including professional fees and disbursements; and
 - e. Ordering such other and further relief as the Tribunal deems available and appropriate in the circumstances.

Respectfully submitted,

Dated: July 31, 2018



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