

MINISTERIO DE COMERCIO E INDUSTRIAS  
DESPACHO DEL MINISTRO

No. de control: \_\_\_\_\_

Recibido por: \_\_\_\_\_

Fecha: 29/Jan/13 Hora: 3:40 pm.



MINISTERIO DE COMERCIO E INDUSTRIAS  
OFICINA DE NEGOCIACIONES COMERCIALES INTERNACIONALES

DESPACHO DEL VICEMINISTRO

Recibido por: Amelias

Fecha: 29/1/13

Hora: 3:37

Investment Dispute  
James Falgout, Barbara Falgout, Clarence Johnson and RIC, SA  
V.  
The Republic of Panama

MICI Sir Minister Ricardo Quijano, Deputy Minister Diana Salazar, Ivelyn Herrera, DINATRADEC, Alexis Pineda, Joanny Vázquez, Republic of Panama

Reference: **Request of Formal Certification MICI DINATRADEC Position** of Total Negotiation Denial of this attempt Formal Dispute submitted to ICSID Arbitration and formally notified to Panama on January 9, 2013. Denial admitted and transmitted verbally to American investors by telephone by the Minister's office and DINATRADEC the January 17, 2013.

Dear MICI Sir Minister Ricardo Quijano,  
Deputy Minister Diana Salazar, Ivelyn Herrera,  
DINATRADEC, Alexis Pineda, Joanny Vázquez,  
Republic of Panama:

First a warm greeting. This letter records officially, and is also a formal request for a MICI DINATRADEC Note certifying its position transmitted to us through conversations with the office of Minister Ricardo Quijano and Joanny Vasquez for DINATRADEC. These conversations took place on January 17, 2013 in the morning, with the legal representatives of investors and myself invited MICI to the negotiating table as required by Bilateral Investment Treaty (BIT) /Free Trade Agreement (FTA) at this stage and even future stages. And again, on January 18, 2013, representatives of our lawyers, the international firm of Bailey Law PC, made an unsuccessful attempt to MICI DINATRADEC who answered the phone from the office of the Minister but immediately transferred to DINATRADEC who never answered. These phone calls are recorded officially in an attempt to begin talks to resolve amicably our dispute with the Republic of Panama through its Administration of Treaties office of MICI, which is the Ministry of Commerce and Industry of the Republic of Panama.

According to the discussions in both offices of MICI which gave us the same answer both for the Minister and DINATRADEC, answer of total denial of the dispute until it reaches ICSID tribunals or any other International Investment Dispute Arbitration Tribunal as provided for by the BIT or FTA. If this is Panama's position it is a breach of the Bilateral Investment Treaty and Free Trade Agreement, which both require Panama to engage in negotiations in good faith to occur prior to the investors filing of an arbitration under the BIT/FTA. Article VII (2) of the BIT mandates that prior to filing for arbitration "the parties to the dispute shall initially seek to resolve it by consultation and negotiation" The word "shall" means this is a mandated condition precedent. Likewise, the FTA provides:

**Article 10.15: Consultation and Negotiation**

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.

This being so, we ask MICI to certify their position, to save us time as we are at high security risks and harassment and is clear for us that MICI is not going to solve this dispute.

However, if by default MICI decides not to answer this communication we will take it as a Certified Negotiation Denial of resolving the dispute of RIC, SA, which is the present position of the MICI by DINATRADEC Resolution 001 of August 14, 2012, please confirm if MICI maintain the same position of not negotiating as required pursuant to the BIT and FTA provisions referenced above, during the current period under formal Arbitration.

On further point, there has been some suggestion that the Notice of Intent to Arbitrate is not properly valid because it is in English. Any such suggestion is absolutely incorrect. The FTA provides for both Spanish or English equally. For example, Article 22.6 provides:

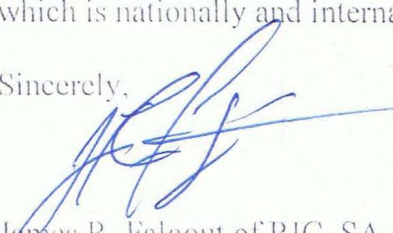
**Article 22.6: Authentic Texts**

The English and Spanish texts of this Agreement are equally authentic.

The BIT provides the same. There is equally nothing in the BIT or the FTA that mandates use of one language over another in the context of any dispute under the treaties. As Americans, as the Notice of Intent to Arbitrate is an official legal document, it is appropriate that it be sent in the native language of the investors. This is English. The Investors also intend that in any arbitration proceedings that we shall present evidence in English. To the extent that Panama wishes to have documents in Spanish, it has sufficient resources and capabilities to translate the documents, although its officials also can speak and read English fluently also.

Without further matter for now, thanking your attention to answer this formal request which is nationally and internationally illegal to ignore or to omit.

Sincerely,

  
James R. Falgout of RIC, SA  
Investor Claimant

