

**IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**



CLOROX SPAIN, S.L.

Claimant

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

Respondent

NOTICE OF ARBITRATION

Guillermo Aguilar Alvarez
Caline Mouawad
Fernando Rodriguez Cortina
Jessica Beess und Chrostin

King & Spalding LLP

Counsel for Claimant

May 18, 2015

Table of Contents

I.	INTRODUCTION	1
II.	THE PARTIES	1
	A. Claimant	1
	B. Respondent	2
III.	FACTUAL BACKGROUND	3
	A. Claimant's Investment in Venezuela	3
	B. Price Controls	4
	C. Currency Exchange Controls	7
	D. Value Added Tax (VAT)	9
	E. Failure to Implement Approved Price Increases	10
	F. Shutdown and Government Taking of Clorox Venezuela's Production Facilities	11
	G. Failed Auction Process and Government's Affirmation of its Direct Expropriation of Clorox Venezuela	13
IV.	RESPONDENT'S CONDUCT BREACHED ITS OBLIGATIONS UNDER THE SPAIN-VENEZUELA BIT	15
	A. Fair and Equitable Treatment ("FET")	15
	B. Full Protection and Security	17
	C. Non-Impairment Measures	18
	D. Expropriation	19
	E. Unrestricted Transfer of Payments in Connection with the Investment	20
V.	AGREEMENT TO ARBITRATE	21
VI.	NUMBER AND APPOINTMENT OF ARBITRATORS	24
VII.	REQUEST FOR RELIEF	25

I. INTRODUCTION

1. Clorox Spain, S.L., a company incorporated under the laws of the Kingdom of Spain,¹ ("Clorox Spain" or "Claimant"), hereby serves notice of the institution of an arbitration proceeding under the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules") against the Bolivarian Republic of Venezuela ("Venezuela", "Respondent" or the "Government") pursuant to Article XI of the Agreement Between the Kingdom of Spain and the Bolivarian Republic of Venezuela on the Reciprocal Promotion and Protection of Investments (the "Spain-Venezuela BIT" or "BIT") dated November 2, 1995.² Clorox has duly authorized the undersigned to institute and pursue arbitration proceedings on its behalf against Venezuela under the BIT.
2. This dispute involves Respondent's systematic mistreatment of Claimant and its investments in Venezuela in breach of Respondent's BIT obligations, including by unlawfully expropriating Claimant's investments. Respondent's misconduct, which continues to this day, engages its international responsibility under the BIT and international law, and entitles Claimant to the relief requested in this Notice of Arbitration.

II. THE PARTIES

A. Claimant

3. Clorox Spain is a company incorporated under the laws of the Kingdom of Spain, located at Calle Ayala 66, 1º Izquierda, 28001, Madrid, Spain.
4. Clorox Spain is represented in this arbitration proceeding by King & Spalding LLP. All communications intended for Clorox Spain should be addressed to:

Guillermo Aguilar Alvarez
Caline Mouawad
Fernando Rodríguez Cortina

¹ Exhibit C-01, Clorox Spain, S.L., Articles of Incorporation, April 15, 2011.

² Exhibit C-02, Agreement Between the Kingdom of Spain and the Bolivarian Republic of Venezuela on the Reciprocal Promotion and Protection of Investments (the "Spain-Venezuela BIT" or "BIT") dated November 2, 1995.

Jessica Beess und Chrostin
King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, New York 10036
United States of America

Tel: +12125562100
Fax: +1 212 556 2222
Email: gaguilar@kslaw.com
cmouawad@kslaw.com
frodriguez-cortina@kslaw.com
jbeessundchrostin@kslaw.com

B. Respondent

5. Respondent is the Bolivarian Republic of Venezuela, a sovereign state and a Contracting Party to the Spain-Venezuela BIT. To Claimant's knowledge, Venezuela has not yet appointed counsel in these proceedings. Clorox Spain gives notice of this arbitration to the Office of the Solicitor General of Venezuela at:

Procuraduría General de la República
Av. Los Ilustres, cruce con Calle Francisco Lazo Martí
Edificio Sede Procuraduría General de la República
Urb. Santa Mónica, Caracas 1040
Venezuela
Attn: Reinaldo Enrique Muñoz Pedroza - *Viceprocurador General de la República Bolivariana de Venezuela*; and
Felipe Andrés Daruiz Ferro - *Coordinador del Despacho del Procurador General de la República Bolivariana de Venezuela*.

With a copy to the Minister of Foreign Relations, Delcy Rodríguez, at:

Delcy Rodríguez
Ministerio del Poder Popular para Relaciones Exteriores
Avenida Urdaneta, Torre MRE, Caracas, 1010
Venezuela

111. FACTUAL BACKGROUND

A. Claimant's Investment in Venezuela

6. Clorox Spain owns 100% of the shares of Corporación Clorox de Venezuela, S.A. ("Clorox Venezuela").³ The company's presence in Venezuela dates back to 1990⁴ and since then, it produced and distributed household products, focusing on cleaning products. Clorox Venezuela's facilities included two administrative offices in Caracas, two manufacturing sites in Santa Lucía and a third manufacturing facility in Guacara.
7. Clorox Venezuela sold its products principally to Makro Comercializadora, S.A.; Red de Abastos Bicentario, S.A.; Central Madeirense, C.A.; Disjogreca, C.A.; Distribuidora CM, C.A.; Víveres de Cándido; Representaciones Dosca; Automercados Plaza; and Excelsior Gama. Among Clorox Venezuela's most important suppliers were Petroquímica de Venezuela, S.A., Graham Packaging Plásticos de Venezuela, C.A.; Cartón de Venezuela, S.A.; Corrugadora Latina & Cía.; Quirexa, S.A.; Pastipack, C.A.; and International Flavors & Fragrances, Inc.⁵
8. The Clorox International Company incorporated Clorox Spain on April 15, 2011 and contributed all of its shares in Clorox Venezuela to Clorox Spain in exchange for shares in the latter.⁶ Consequently, Clorox Spain has been the sole shareholder of Clorox Venezuela since April 15, 2011.
9. At the time of Clorox Spain's acquisition, Clorox Venezuela was a profitable business. However, Venezuela subsequently adopted measures in breach of the BIT that have significantly damaged Clorox Spain and its wholly-owned subsidiary, Clorox Venezuela. As further detailed below, the Government of Venezuela assumed the power to determine the price of Clorox Venezuela's products and imposed additional currency exchange controls that are inconsistent with the BIT. Moreover, the Government of Venezuela failed to allow Clorox Venezuela to recover its tax credits against the Venezuelan Treasury derived from excess value-added tax (VAT) withheld by Clorox Venezuela's

³ Exhibit C-01, Clorox Spain, S.L., Articles of Incorporation, April 15, 2011.

⁴ Exhibit C-03, Restated Articles of Incorporation and By-laws dated September 6, 2012.

⁵ Red de Abastos Bicentario, S.A. and Petroquímica de Venezuela, S.A. are state enterprises.

⁶ Exhibit C-01, Clorox Spain, S.L., Articles of Incorporation, April 15, 2011.

clients and late payment interest thereon. As a result of these measures, Venezuela deprived Clorox Venezuela of the right to operate as a commercial entity by forcing it to assume the cost of the government's policies of subsidized consumption, while negating access to foreign currency to pay for imports or repatriate profits. Further, the Government of Venezuela failed to implement the price increases that Clorox Venezuela and the Government repeatedly discussed that were necessary for the business to be sustainable and, on September 26, 2014, occupied and directly took Clorox Venezuela's Santa Lucía and Guacara production facilities and its administrative offices in Caracas. The Government of Venezuela then affirmed its takeover of Clorox Venezuela on November 3, 2014 by formally appointing a Special Administration Board to fully administer, manage, and operate the business and facilities of Clorox Venezuela, by announcing that it would operate Clorox Venezuela's facilities, by misappropriating and modifying the Clorox logo and by using the Nevex and Mistolin trademarks.

B. Price Controls

10. On July 18, 2011, the Government of Venezuela promulgated the Law on Fair Costs and Prices⁷, which fully entered into force on November 22, 2011.⁸ This law introduced rules creating a legal framework that would ultimately remove Clorox Venezuela's ability to operate as a commercial entity by granting the National Superintendence of Costs and Prices (*Superintendencia Nacional de Costos y Precios*, or *SUNDECOP*) the power to (i) review the cost structure of goods and services; and (ii) establish the Maximum Sale Prices to the Public (MSPP) (or price ranges) for certain goods and services.⁹
11. Further, in February and March of 2012, SUNDECOP issued Administrative Order Nos. 053¹⁰ and 059¹¹ pursuant to the Law on Fair Costs and Prices. These Administrative Orders fixed the maximum prices for 19 products, including food products (*e.g.*, pasteurized fruit juices, apple sauce, mineral water), personal hygiene products (*e.g.*,

⁷ **Exhibit C-04**, Law on Fair Costs and Prices ("2011 Law on Fair Costs and Prices"), Decree No. 8331, published in the Official Gazette, July 18, 2011 (*Ley de Costos y Precios Justos*).

⁸ *Id.* Article 88.

⁹ *Id.* Article 31.

¹⁰ **Exhibit C-05**, Administrative Order No. 054 issued by the *Superintendencia Nacional de Costos y Precios* ("SUNDECOP"), February 28, 2012 (*Providencia Administrativa No. 053*).

¹¹ **Exhibit C-06**, Administrative Order No. 059 ("Administrative Order No. 059") issued by the *Superintendencia Nacional de Costos y Precios* ("SUNDECOP"), March 29, 2012 (*Providencia Administrativa No. 059*).

shampoo, conditioner, bath soap, toothpaste, deodorant), and cleaning products (*e.g.*, dishwashing liquid, floor wax). Specifically, these Orders fixed the prices of chlorine, wax, and disinfectant cleaners manufactured and sold by Clorox Venezuela.¹² These mandatory price ceilings entered into effect on April 1, 2012¹³ and--despite triple-digit inflation over the subsequent two years--remained unchanged until September 2014. Under this standard, a significant amount of the goods manufactured by Clorox Venezuela were subject to SUNDECOP's discretionary price restrictions.

12. Simultaneously, in May 2012, Venezuela enacted the Organic Labor and Employees Law ("Organic Labor Law"),¹⁴ which introduced new restrictions.. For instance, Clorox Venezuela was forced to reduce efficiency in production to comply with a decrease in work hours, notwithstanding the fact that it had been operating at a loss directly as a result of the government's pricing regulations.
13. Simply put, Clorox Venezuela was not free to manage its business. Clorox Venezuela was not permitted to set the prices for its own products, and it was also banned from managing production to adjust for losses resulting from sales at government-set prices.
14. Additionally, in November 2013 the National Assembly approved an "enabling law" granting the President of Venezuela authority to enact laws and regulations in certain policy areas by decree (*i.e.*, without legislative approval).¹⁵ Among the President's new executive powers was the ability to regulate profit margins, foreign exchange, and the production, import, and distribution of certain goods produced by Clorox Venezuela.¹⁶
15. On January 23, 2014, the President used this enabling power to pass the Organic Law on Fair Prices ("Organic Fair Prices Law").¹⁷ This Law replaced the Law on Fair Costs and

¹² *Id.* al Article 4.

¹³ *Id.* al Article 19.

¹⁴ Exhibit C-07, Organic Labor and Employees Law ("Organic Labor Law") dated April 30, 2012, published in the Official Gazette, May 7, 2012 (*Ley Orgánica del Trabajo, las Trabajadoras y los Trabajadores*).

¹⁵ Exhibit C-08, Law that Authorizes the President of the Republic to Enact Decrees, with Value, Rank and Force of Law in the Delegated Matters ("Enabling Law"), approved by the Venezuelan National Assembly, November 19, 2013 (*Ley que Autoriza al Presidente de la República para Dictar Decretos con Rango, Valor y Fuerza de Ley en las Materias que se le Delegan*).

¹⁶ *Id.* al Article 1(2).

¹⁷ Exhibit C-09, Organic Fair Prices Law, published in the Official Gazette, January 23, 2014 (*Decreto con Rango. Valor y Fuerza de Ley Orgánica de Precios Justos*).

Prices and authorized the Government of Venezuela to fix prices for goods and services and to limit profit margins.¹⁸ Under the new law, the Government would act through the *Superintendencia Nacional para la Defensa de los Derechos Socio Económicos* ("SUNDDE").

16. While the Organic Fair Prices Law set forth certain principles on how to establish "fair prices," its broad discretion to interpret and apply those principles quickly led SUNDDE to fix prices arbitrarily.
17. The Organic Fair Prices Law further declared certain goods and services to be of "public use and social interest."¹⁹ The Government of Venezuela may take expropriatory action, occupy private property, confine or seize assets, close businesses, impose fines and/or suspend licenses for any breach to the Organic Fair Prices Law.²⁰ Critically, sanctions also included up to 10 years of imprisonment for officers, shareholders, directors and managers of any company breaching the law.²¹
18. Other relevant provisions of this Organic Fair Prices Law
 - (a) secured government control by requiring companies operating in Venezuela to register with the SUNDDE;²²
 - (b) established criminal sanctions (prison) for companies operating in Venezuela and their officers for any limitation on production, supply, distribution, circulation or marketing of its products;²³ and
 - (c) required sanctioned entities to retain and continue paying their employees.²⁴

¹⁸ *Id.* at Article I.

¹⁹ *Id.* at Article 7. The Organic Fair Prices Law declared all goods and services required to develop production, manufacturing, importation, storage, transportation, distribution and marketing activities of goods and services to be of public use and social interest.

²⁰ *Id.* at Articles 39 and 45.

²¹ *Id.* at Articles 51 and 66.

²² *Id.* at Article 22.

²³ *Id.* at Articles 51, 54 and 55.

²⁴ *Id.* at Article 45.

19. In sum, under the Organic Fair Prices Law, Clorox Venezuela risked expropriation, confiscation, closure and criminal sanctions for its administrators if it refused to indefinitely operate at a loss: setting its own prices and reducing supply were outlawed.²⁵

C. Currency Exchange Controls

20. After the devaluation of the official exchange rate of the Venezuelan Bolivar from VEB 4.3 to 6.3 per USO in February 2013, the Venezuelan currency exchange regime changed significantly, adversely affecting Clorox Venezuela. In March 2013, the Government of Venezuela established an auction mechanism for the purchase of foreign currency for imports: the Complementary System of Administration of Foreign Currency (*Sistema Complementario de Administración de Divisas*, or SICAD).²⁶
21. The participation rules for the new SICAD system lacked both clarity and transparency. First, calls or bids did not include the basic information required by rules issued by the Central Bank for the operation of the auctions.²⁷ Of particular relevance to Clorox, at no point were SICAD auctions ever available for the purpose of repatriating investment proceeds.²⁸ Second, the Government controlled access to foreign currency auctions. Only companies involved in certain sectors of the economy were invited to participate, but the rationale for extending invitations was not made public and remained solely within the Government's discretion.²⁹ Third, even when invited to participate in the auction process, companies did not receive the amounts requested but rather those decided by the Government, with no indication as to how the Government had awarded the amounts.

²⁵ In addition, Article 148 of the 2012 Organic Labor Law restricted the dismissal of workers for economic reasons (Exhibit C-07).

²⁶ Exhibit C-10, Exchange Agreement No. 21 between the Ministry of the Popular Power of the Economy, Finance, and Public Banking and the Venezuelan Central Bank, March 22, 2013.

²⁷ The economic sectors authorized to participate in each auction, the amount of currency to be offered and all other information necessary for interested companies to participate.

²⁸ Exhibit C-11 Exchange Agreement No. 25 between the Ministry of the Popular Power of the Economy, Finance, and Public Banking and the Venezuelan Central Bank ("Exchange Agreement No 25") Exchange Agreement No. 25 does not contemplate that auctions are to be used for payment of dividends. See *also*, calls for the auctions made by the Venezuelan Central Bank, available at <http://www.bcv.org.ve/c5/sicad/c9/tme04.asp> (showing that there were no calls for dividends).

²⁹ See Exhibit C-11, Exchange Agreement No. 25; calls for the auctions made by the Venezuelan Central Bank, available at <http://www.bcv.org.ve/c5/sicad/c9/tme04.asp>.

22. The SICAD system thus gave the Government very tight and opaque control over the purchase and use of foreign currency. Companies could access U.S. dollars only for specific transactions, only when the Government decided to hold an auction for that purpose, only when invited by the Government, and only in the amount unilaterally decided by the Government. This meant that Clorox Venezuela simply could not access U.S. dollars freely for its business needs.
23. Moreover, Venezuelan Government's adoption of the SICA system effected a significant devaluation of the VEB—the SICAD exchange rate fluctuated between VEB 10 and 11.8 per USD,³⁰ as compared to the official exchange rate of VEB 63 per USD (the rate is available only for the purchase of essential goods and services such as certain foods and medicine). As a result, when SICA went into effect Clorox Venezuela's "trapped cash" lost half of its value overnight.
24. The value of Clorox Venezuela's cash assets trapped in country decreased by an additional 80% on March 10, 2014, when a second exchange rate system, SICAD II, was created pursuant to Exchange Agreement No. 27 between the Ministry of the Popular Power of the Economy, Finance, and Public Banking and the Venezuelan Central Bank.³¹ Under SICAD II, which was regulated by the Venezuelan Central Bank, participants could bid for dollar-denominated securities through banks and brokerage firms every day.³² Financial intermediaries forwarded bids to the Venezuelan Central Bank, which matched buyers with sellers and approved transactions. Entities were allowed to submit one application per day to registered banks, brokerage firms and exchange houses that were authorized by the Venezuelan Central Bank to administer the foreign exchange.³³ The weighted average exchange rate of SICAD II from March 24, 2014 to February 11, 2015 was VEB 49.90 per USD.³⁴

³⁰ Exhibit C-12, Venezuelan Central Bank, Rate Exchange resulting from the currency allocations made through SICAD from December 23, 2013 to September 24, 2014.

³¹ Exhibit C-13, Exchange Agreement No. 27 between the Ministry of the Popular Power of the Economy, Finance, and Public Banking and the Venezuelan Central Bank, March 10, 2014.

³² *Id.* at Article 2.

³³ *Id.* at Article 4.

³⁴ Exhibit C-14, Venezuelan Central Bank, Average Weighted Rate Exchange of SICAD II from March 24, 2014 to February 11, 2015. On February 12, 2015, Venezuela again modified its exchange control regime to eliminate the SICAD II system and substitute it with another exchange rate mechanism, described by the Government as the Marginal

25. The Government of Venezuela's exchange regime imposed an arbitrary and undue burden on Clorox Spain and its subsidiary to operate as a functional, commercial company that purchased and imported materials, paid royalties, technical assistance fees and repatriated investment proceeds *free/y*. Clorox Venezuela was not able to acquire foreign currency or to repatriate investment proceeds as guaranteed under Article VII of the BIT.

D. Value Added Tax (VAT)

26. VAT is due *inter alia* on the sale of goods or services performed in Venezuela. The VAT is designed to operate based on a debit and credit system. A VAT taxpayer must collect VAT on the goods or services it sells ("output VAT") and may offset the VAT it pays other providers of goods and services or upon the importation of goods and services (the "input VAT"). Taxpayers must submit a monthly VAT return. If the "output VAT" (on sales) is greater than the "input VAT" (on purchases or importations), the difference, which is the payable VAT, must be paid to the Venezuelan Treasury. The Venezuelan VAT Law refers to such difference or payable VAT as "tax quota". The National Tax Authority (*Servicio Nacional Integrado de Administración Aduanera y Tributaria* ("SENIAT")) is in charge of collecting and auditing the VAT. If the input VAT exceeds output VAT, then the taxpayer may indefinitely carry forward the excess input VAT and apply it against the output VAT generated in future tax periods until it is exhausted.
27. Companies characterized as "special taxpayers" by the tax authority are appointed as VAT withholding agents. Clorox Venezuela was one such company. When a taxpayer supplies goods or services and invoices to an appointed VAT withholding agent, the withholding agent withholds 75% or 100% of the output VAT and issues a VAT withholding certificate to the supplier stating the amount of VAT withheld. The appointed withholding agent then pays the withheld VAT to the Venezuelan Treasury, on behalf of the supplier.³⁵

Currency System (*Sistema Marginal de Divisas*, or SIMADJ). See Exchange Agreement No. 33 published in the Official Gazette, February 10, 2015.

³⁵ Exhibit C-15, Administrative Guidelines No. SNAT/2013/0029 and 0030 published in the Official Gazette, May 20, 2013.

28. Withheld VAT is deemed an advance payment of the VAT due by the taxpayer for the relevant month. For that reason, the taxpayer is entitled to credit the withheld VAT against the tax quota.³⁶ This means that the withholding agent is able to offset the withheld VAT against its monthly VAT liability or "tax quota". Where the withheld VAT reported by a taxpayer in a given month is not completely offset against the tax quota due in that month or over the subsequent three consecutive months, the taxpayer has the right to recover the excess VAT withholdings from SENIAT. This may be done by filing a claim with the Regional Management of Internal Taxes of SENIAT for the return of excess VAT withholdings.³⁷ SENIAT should reply to the claim within thirty business days following its filing and issue the relevant tax certificates.³⁸ In practice, however, during the twelve-odd years since the VAT withholding procedure was created, SENIAT has not issued tax certificates to most VAT taxpayers that are suppliers of special taxpayers. The result is that most VAT taxpayers that also qualify as "special taxpayers", like Clorox Venezuela, have been required to serve as the government's tax collectors while being wholly deprived of their legal claim to excess VAT withholdings.
29. Clorox Venezuela repeatedly filed recovery claims with SENIAT for excess VAT withholdings and is undisputedly owed tax certificates in the amounts set forth in those claims, plus interest. The Government of Venezuela, however, never replied to any of Clorox Venezuela's claims, and it failed to issue any of the certificates owed.

E. Failure to Implement Approved Price Increases

30. In April 2014, the Government of Venezuela outlined a "new offensive" for the Venezuelan economy, supported by three key objectives: to increase production, to eradicate scarcity, and to enforce fair prices.³⁹ As part of this economic offensive, Clorox Venezuela was appointed a sponsor, Major Elio Pacheco of Empresa Suministros Venezolanos Industriales C.A. (SUVINCA), charged with bringing Clorox Venezuela's dire situation to the attention of the then Minister of the Popular Power for Commerce, Dante Rivas. As a result of a series of meetings and discussions between Clorox

³⁶

id.

³⁷

id.

³⁸

id.

³⁹

Exhibit C-16, Venezuela's Maduro Unveils New Economic Offensive, VENEZUELANALYSIS.COM, April 22, 2014.

Venezuela representatives and various governmental officials, Minister Rivas committed in early June 2014 (i) to increase prices for Clorox Venezuela's Mistolin® disinfecting cleaners and Nevex® bleach products by 100 percent and 55 percent, respectively no later than the second week of June 2014, so as to provide some instant relief, and (ii) going forward, to review Clorox Venezuela's cost structure more thoroughly so that its prices could be increased to appropriate levels in terms of the Organic Fair Prices Law before the end of calendar year 2014, with periodic increases thereafter.⁴⁰ While these immediate price increases would not have compensated Clorox Venezuela for its inability to sell at company-determined prices, they could have allowed Clorox Venezuela to delay suspending its operations and potentially avoid the serious sanctions applicable under the Organic Fair Prices Law.

31. Notwithstanding Minister Rivas' assurances, the Government of Venezuela did not publish any price increases applicable to the regulated Clorox Venezuela products until September 4, 2014.⁴¹ Compounding the injury to Clorox Venezuela, the price increases finally published at that time were utterly insufficient; they arrived far too late; and they would have caused Clorox Venezuela to continue operating at a significant loss for an indefinite period of time.

F. Shutdown and Government Taking of Clorox Venezuela's Production Facilities

32. On September 22, 2014, Clorox Venezuela was forced to discontinue its operations in Venezuela⁴² as a direct result of the significant and unsustainable losses Clorox Venezuela suffered by virtue of the Venezuelan Government's self-proclaimed authority to determine the cost and price of Clorox Venezuela's products, the penalization of any adjustment to Clorox Venezuela's workforce, the restrictive and opaque foreign exchange regulations, and the Government's decision to refuse Clorox Venezuela's rightful claim to substantial VAT credits. In other words, unable to manage and operate its business,

⁴⁰ Exhibit C-17, Letter from O. Ledesma, Clorox Venezuela, to D. Rivas, Minister of Commerce, June 13, 2014; Exhibit C-18, Letter from M. Costello, Clorox Venezuela, to President N. Maduro, July 3, 2014.

⁴¹ Exhibit C-19, Administrative Order No 042/2014 issued by the *Superintendencia Nacional para la Defensa de los Derechos Socio Económicos* ("SUNDDE") September 4, 2014.

⁴² Exhibit C-20, *Clorox Announces Exit From Venezuela and Confirms FY/5 Outlook/or Sales and EPS From Continuing Operations*, September 22, 2014.

Clorox Venezuela was no longer viable and Clorox had no choice but to discontinue its operations in Venezuela to cut its mounting losses.

33. Since the production of cleaning products is a highly specialized and technical process, that involves the use of dangerous substances such as chlorine, Clorox Venezuela safely secured its production facilities in Santa Lucía and Guacara in complete shut-down mode before discontinuing operations.
34. Clorox Spain and Clorox Venezuela promptly announced their intention to sell Clorox Venezuela's assets on an expedited basis to mitigate their damages and to permit a swift transfer of Clorox Venezuela's assets to a new owner.⁴³ However, on September 26, 2014, the Government of Venezuela occupied and directly took over Clorox Venezuela's Santa Lucía and Guacara production facilities and its administrative offices in Caracas.⁴⁴ Clorox Venezuela duly notified the Venezuelan government of this discontinuation.
35. During the Venezuelan Government's take-over of Clorox's production facilities, the Vice President of Venezuela Jorge Arreaza announced that Clorox Venezuela's facilities were being occupied by the Government of President Maduro.⁴⁵ On Venezuelan state television (*Venezolana de Televisión*), Vice President Arreaza further stated that the Venezuelan Government will continue to occupy Clorox Venezuela's facilities together with the company's former employees.⁴⁶ He stated that the workers had liberated the plant and that the Government will be bringing in experts, including businessmen from the industry and other national companies, to assist the company's former employees in resuming operations at the Santa Lucía and Guacara facilities.⁴⁷ Moreover, Vice

⁴³) Exhibit C-21, *Venezuela takes over plants left by U.S. firm Clorox*, REUTERS, September 26, 2014.

⁴⁴ Exhibit C-21, *Venezuela takes over plants left by U.S. firm Clorox*, REUTERS, September 26, 2014; Exhibit C-22, *Venezuela gov't occupies plants of U.S. multinational Clorox*, Fox NEWS LATINO, September 26, 2014; Exhibit C-23, *Arreaza and workers reactivate Clorox factory*, Venezuela State Television, English transcript of original Spanish video, video available at <https://v.l11w.youtube.com/watch?v=NYWw2v2JJJc>, September 26, 2014.

⁴⁵ Exhibit C-21, *Venezuela takes over plants left by U.S. firm Clorox*, REUTERS, September 26, 2014; Exhibit C-22, *Venezuela gov't occupies plants of U.S. multinational Clorox*, Fox NEWS LATINO, September 26, 2014; Exhibit C-23, *Arreaza and workers reactivate Clorox factory*, Venezuela State Television, English transcript of original Spanish video, video available at <https://v.l11w.youtube.com/watch?v=NYWw2v2JJJc>, September 26, 2014.

⁴⁶ Exhibit C-21, *Venezuela takes over plants left by U.S. firm Clorox*, REUTERS, September 26, 2014; Exhibit C-23, *Arreaza and workers reactivate Clorox factory*, Venezuela State Television, English transcript of original Spanish video, video available at <https://v.l11w.youtube.com/watch?v=NYWw2v2JJJc>, September 26, 2014.

⁴⁷ Exhibit C-22, *Venezuela gov't occupies plants of U.S. multinational Clorox*, Fox NEWS LATINO, September 26, 2014; Exhibit C-23, *Arreaza and workers reactivate Clorox factory*, Venezuela State Television, English transcript of original Spanish video, video available at <https://v.l11w.youtube.com/watch?v=NYWw2v2JJJc>, September 26, 2014.

President Arreaza threatened to criminally prosecute any employees of Clorox Venezuela suspected of being involved in the company's discontinuance of operations and stated that the Government's actions vis-a-vis Clorox Venezuela should be treated as a warning to other companies that may be considering shutting down operations.⁴⁸

G. Failed Auction Process and Government's Affirmation of its Direct Expropriation of Clorox Venezuela

36. Immediately after discontinuing operations, Clorox Venezuela and Clorox Spain initiated an expedited sale process. However, due to the Government's direct expropriation of Clorox Venezuela's facilities on September 26, 2014, Clorox Venezuela and Clorox Spain were unable to sell Clorox Venezuela's assets.
37. The Venezuelan Government's measures relating to Clorox Venezuela conclusively foreclosed the possibility of any asset sale. On November 3, 2014, the Government published in its Official Gazette (*Gaceta Oficial de la República Bolivariana de Venezuela*) a Joint Resolution of the Ministry for the Popular Power for the Social Process of Work (DM/No.8936) ("Ministry of Labor") and the Ministry of the Popular Power of Industries (DM/No.074) ("Ministry of Industries").⁴⁹ This Joint Resolution appointed a Special Administration Board to control, manage, restart and operate the Clorox Venezuela business. This special new board (the "New Board") comprised seven directors, four of which represented governmental entities, originally from the Ministry of Industry, Ministry of Commerce, Ministry of Labor, and SUNDDE. The Government granted the New Board full managerial powers to undertake any required activity to guarantee the operation of Clorox Venezuela's facilities, including among other things, negotiating and executing on behalf of the company all services, lease and loan agreements in connection with the day-to-day business of the company, issuing and endorsing credit notes and negotiable instruments, and producing and distributing products manufactured in Clorox Venezuela's facilities. The New Board was appointed for a one-year term from its designation, subject to subsequent extensions. This Joint

⁴⁸

Id.

⁴⁹

Exhibit C-24, Joint Resolution of the Ministry of the Popular Power for the Social Process of Work (DM/No.8936) and the Ministry of the Popular Power of Industries (DM/No.074) dated October 29, 2014, published in the Official Gazette, November 3, 2014 ("Joint Resolution").

Resolution was issued without the consent or involvement of either Clorox Venezuela or Clorox Spain.

38. Effective as of April 13, 2015,⁵⁰ the Ministry of Labor and the Ministry of Industries amended the Joint Resolution to replace the SUNDDE and Ministry of Commerce representatives to the New Board. The amended Joint Resolution also extends the New Board's term to April 13, 2016 (*i.e.*, one year from its appointment on April 13, 2015). Full managerial and operational powers remain in force under the amended Joint Resolution.
39. Under one of its provisions (Article 4), the Joint Resolution is to be filed with each of the Public Registry offices in which the articles of incorporation, bylaws or meetings of Clorox Venezuela are registered.⁵¹ Accordingly, only the New Board is permitted to act on behalf of Clorox Venezuela.⁵²
40. On November 5, 2014, the Venezuelan Government announced the reactivation of the Guacara plant with an investment of VEB 261 million or USD\$41 million at the official exchange rate of VEB 63 per USD.⁵³
41. On December 14, 2014, Clorox Spain became aware that Venezuela had begun using an altered version of the trademarked Clorox brand logo to include an image of a heart with a phrase that reads "Hecho en Socialismo" ("Made in Socialism").
42. The Joint Resolution and the Government operation of the Guacara plant affirm the Government of Venezuela's direct expropriation of Clorox Venezuela.

⁵⁰ Exhibit C-25, Joint Resolution of the Ministry of the Popular Power for the Social Process of Work (No.9110) and the Ministry of the People's Power of Industries (No.012) published in the Official Gazette, April 13, 2015.

⁵¹ *Id.* at Article 4.

⁵² By letter of December 30, 2014, Clorox Spain informed the Government that it could not cause Clorox Venezuela to comply with any of the then current or future requirements imposed by Venezuelan governmental authorities, including for tax, labor and environmental matters. Exhibit C-26, Letter from A. Hilt, Clorox Spain, S.L., to the Attorney General of Venezuela and R. Darío Ramírez, Minister of the Popular Power of Foreign Affairs, December 30, 2014.

⁵³ Exhibit C-27, *Clorox Company reactivated by workers and the Bolivarian Government*, DIARIO OJO PELAO, November 6, 2014; Exhibit C-28, *Reactivation of the Clorox Factory*; Venezuela State Television Video, video transcript, video available at http://tv.w.tjopelao.co/11/n:activa-1:mprsa-clorox-por-1:trabajadores-v-gobi1110-bolivariano-13-fotosvideo/?utm_source=twitterfeed&utm_medium=twitter%3chttp://www.ojopelao/reactiva-cmpresa-clorox-por-trabajadores-y-gobierno-bolivariano-13-fotosvideo/?utm_source=twitterfeed&utm_medium=twitter, November 6, 2014.

IV. RESPONDENT'S CONDUCT BREACHED ITS OBLIGATIONS UNDER THE SPAIN-VENEZUELA BIT

43. The Government of Venezuela's measures, as set forth above, deprived Clorox Spain and its wholly-owned subsidiary of control over pricing and level of production output, and resulted in the expropriation of Clorox Venezuela and threatened criminal sanctions against Clorox Venezuela's employees and former employees. The effect of the Government of Venezuela's measures was to force Clorox Venezuela to operate at a significant loss. Moreover, the Government of Venezuela prevented Clorox Venezuela from having access to foreign currency required to import necessary inputs, export investment proceeds, service its debt, and pay royalties. Put simply, Clorox Venezuela was deprived of the right to operate as a commercial entity and forced to assume the costs of the government's policies of subsidized consumption. These measures constitute unlawful indirect expropriation. Moreover, the Government of Venezuela also directly expropriated Clorox Venezuela unlawfully when it occupied Clorox Venezuela's Santa Lucía and Guacara production facilities and its administrative offices in Caracas and put in place and funded a government-sponsored Special Administration Board to exercise full corporate, managerial, and operational control over Clorox Venezuela. The Government of Venezuela has also misappropriated the Clorox logo and interfered with Clorox Venezuela's intellectual property rights.

44. As further detailed below, these measures are in breach of Venezuela's obligations under Articles IV, 11(1), V, and VII of the BIT and have caused damage to Clorox Spain and its wholly-owned subsidiary Clorox Venezuela.

A. Fair and Equitable Treatment ("FET")

45. Article IV(1) of the BIT imposes on Venezuela an obligation to "guarantee in its territory fair and equitable treatment, in accordance with international law, of investments made by investors of the other Contracting Party."⁵⁴ Article IV(2) requires this treatment to be "no less favourable than the treatment accorded by each Contracting Party to its

⁵⁴ Exhibit C-02, BIT Article IV(1).

investments made and returns obtained in its territory by its own investors or by investors of any third State."⁵⁵

46. Fair and equitable treatment is not defined in the Spain-Venezuela BIT. Arbitral tribunals generally have defined it as treatment that is just, even-handed, unbiased, legitimate, consistent, and transparent.⁵⁶ Conduct that is arbitrary, grossly unfair, unjust, or idiosyncratic violates the FET standard.⁵⁷ FET is also understood as encompassing standards of good faith, due process, non-discrimination, and proportionality.⁵⁸
47. Under any of these understandings, Venezuela has breached the Spain-Venezuela BIT's FET protections. Venezuela's 2011 and 2014 price laws are unfair and contrary to Clorox Spain's legitimate expectations that it would be able to operate and control its business in Venezuela. These laws dictated Clorox Venezuela's prices and profit margins and threatened not only civil and criminal sanctions for reduction of the level of production, but also expropriation if Clorox Venezuela refused to maintain output, even when its losses increased with every unit that it put on the market.
48. Moreover, Venezuela's currency regulations wholly lacked transparency. Clorox Venezuela's very limited access to foreign currency gravely hindered its ability to operate its business as a commercial going concern. Under the SICAD system, it was for Venezuela to decide, in its sole discretion, which companies to invite to participate in the auction process for a particular purpose and what amounts of U.S. dollars, if any, to award.⁵⁹ The SICAD II system did nothing to remedy the shortage of U.S. dollars, which

⁵⁵ *Id.* at Article IV(2).

⁵⁶ CLA-01, *Siemens A.G. v Argentina*, ICSID Case No. ARB/02/08, Award, February 6, 2007, 1290 ("Siemens Award"); CLA-02, *MID Equity Sdn. Bhd. and MID Chile S.A. v Republic of Chile*, ICSID Case No. ARB/01/7, Award May 25, 2004, 1113.

⁵⁷ CLA-03, *Waste Management, Inc. v Mexico*, ICSID Case No. ARB(AF)/00/3, Award, April 30, 2004 ("Waste Management II Award"), 198.

⁵⁸ CLA-04, *Técnicas Medioambientales Tecmed, S.A. v United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003 ("Tecmed Award"), 1 153; CLA-03, *Waste Management II Award*, 1 138; CLA-05, *Azurix Corp. v Argentina*, ICSID Case No. ARB/01/12, Award, July 14, 2006 ("Azurix Award") 1 372; CLA-06, *CMS Gas Transmission Co. v Argentine Republic*, ICSID Case No. ARB/01/8, Award, May 12, 2005 ("CMS Award"), 1280.

⁵⁹ See calls for the auctions made by the Venezuelan Central Bank, available at <http://www.bcv.org.ve/c5/sicad/c9/tme04.asp>; Exhibit C-11, Exchange Agreement No. 25.

are nearly five-fold as expensive as SICAD U.S. dollars and eight-fold as expensive as the official exchange rate.⁶⁰

49. Further, Venezuela's refusal to allow Clorox Venezuela to recover its VAT credits is grossly unfair and idiosyncratic.
50. Venezuela's takeover of Clorox Venezuela's production and administrative facilities followed by the appointment and funding of a Special Administration Board also constitutes unfair and inequitable treatment. Venezuela took these measures without affording Clorox Venezuela or Clorox Spain any due process and without giving Clorox Venezuela or Clorox Spain an opportunity to be heard, all in breach of the fair and equitable treatment standard.

B. Foil Protection and Security

51. Article III(1) of the BIT requires Venezuela to "provide full protection and security in accordance with international law to investments made in its territory by investors of the other Contracting Party."⁶¹
52. The full protection and security standard requires Venezuela to afford Spanish investors legal security, namely the stability of a secure investment environment.⁶² Moreover, treatment that is not fair and equitable automatically entails an absence of full protection and security.⁶³
53. In this case, Venezuela breached its obligation to provide full protection and security to Clorox Spain by violating its obligation to treat Clorox Venezuela fairly and equitably, creating an unstable legal environment, and unlawfully expropriating Clorox Spain's investment without prompt, appropriate, and effective compensation. Venezuela

⁶⁰ See Exhibit C-12, Venezuelan Central Bank, Rate Exchange resulting from the currency assignments made through SICAD from December 23, 2013 to September 24, 2014; Exhibit C-14, Venezuelan Central Bank, Average Weighted Rate Exchange of SICAD II from March 24, 2014 to February 11, 2015.

⁶¹ Exhibit C-02, BIT Article III(1).

⁶² CLA-07, *Se mpra v Argentina*, ICSID Case No. ARB/02/16, Award, Sept 28, 2007, ¶ 300; CLA-08, *LG&E v Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, Oct. 3, 2006 ("*LG&E Decision on Liability*"), ¶ 124; CLA-09, *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA No. UN 3467, Award, July 1, 2004, ¶ 183 ("*Occidental Award*"); CLA-10, *American Manufacturing & Trading, Inc. (AMT) v. Zaire*, Case ICSID ARB/93/1, Award, Feb. 21, 1997, ¶¶ 116-11; CLA-11, *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, Sept. 13, 2001 ("*CME Partial Award*"), ¶ 613; CLA-05, *Azu rix Award*, 1408; CLA-01, *Siemens Award*, 1303

⁶³ CLA-09, *Occidental Award*, ¶ 187; CLA-05, *Azu rix Award*, 1408.

promulgated a legal framework that essentially prevented Clorox Venezuela from operating its business as a commercial enterprise, thereby forcing it to subsidize domestic consumption and to incur significant losses. These new laws further compromised the legal security of Clorox Spain's investment by threatening criminal sanctions, intervention, and expropriation in the event of non-compliance.

54. Not only did Venezuela not afford protection, it did exactly the opposite. Venezuela violated Article 111(1) of the BIT by physically occupying and affirming its expropriation of Clorox Venezuela's production and administrative facilities, and by threatening to prosecute the company and its employees and former employees.

C. Non-Impairment Measures

55. Article 111(1) of the BIT also requires Venezuela not to "obstruct by arbitrary or discriminatory means the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate liquidation of such investments."⁶⁴
56. Venezuela's adoption of successive arbitrary, discriminatory, and increasingly onerous price regulations on certain products, but not others, and its restrictive currency regimes constitute a breach of Venezuela's obligation not to impair the operation of investments in its territory. Selectively imposing arbitrary price controls and onerous labor regulations, forcing continued operation of a company at a loss, not reimbursing owed VAT credits, and the threat of introducing criminal sanctions and expropriation to guarantee the enforcement of the breaching regime are all measures that arbitrarily and discriminatorily "obstruct" every aspect of Clorox Venezuela's operations. The physical takeover of Clorox Venezuela's facilities and the appointment of the Special Administration Board to manage and operate Clorox Venezuela's business also are in blatant breach of Article 111(1) of the BIT.
57. These arbitrary and discriminatory measures prevented Clorox Spain and Clorox Venezuela from selling Clorox Venezuela's assets, which is now definitively foreclosed with the appointment of a Special Administration Board that is now the only entity with

⁶⁴ Exhibit C-02, BIT Article 111(1).

powers to sell assets, register any such sale, and effect all acts necessary to sell Clorox Venezuela's assets. The very existence of this New Board and the breadth of its corporate, managerial, and operational powers clearly obstruct Clorox Spain's "management, maintenance, development, use, enjoyment, extension, sale or, where appropriate liquidation" of its investment, Clorox Venezuela.

D. Expropriation

58. The BIT further prohibits nationalization and expropriation without prompt, appropriate and effective compensation. Article V(1) of the BIT provides that "[i]nvestments made in the territory of one Contracting Party by investors of the other Contracting Party shall not be subject to nationalization, expropriation or any other measure of a similar type or having similar effects except when such a measure is taken exclusively for reasons of the public interest, in accordance with the law and in a non-discriminatory manner, and is accompanied by payment to the investor or his assignee of prompt, appropriate and effective compensation."⁶⁵
59. By its arbitrary and discriminatory conduct, Venezuela depressed Clorox Venezuela's financial condition, substantially depriving Clorox Spain of the economic benefit of its investment. Venezuela's measures destroyed a profitable business, forcing Clorox Venezuela to indefinitely operate at a significant loss, and ultimately forcing Clorox Venezuela to discontinue operations altogether. This constitutes an unlawful indirect expropriation.
60. In addition to indirectly expropriating Clorox Venezuela's business, the Government of Venezuela also has unlawfully directly expropriated Clorox Venezuela by taking over Clorox Venezuela's production and administrative facilities and licensed trademarks (Clorox logo), without prompt, appropriate and effective compensation and by appointing and funding a Special Administration Board to assume full corporate, managerial, and operational control of Clorox Venezuela. This takeover of Clorox Venezuela's production and administrative facilities, and its intellectual property rights constitutes a direct expropriation of Clorox Venezuela in violation of Article V(I) of the BIT.

⁶⁵ Exhibit C-02, BIT Article V(1).

E. Unrestricted Transfer of Payments in Connection with the Investment

61. Article VII of the BIT provides the following:

Article VII: Transfer

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of investments made in its territory, unrestricted transfer of payments in connection with such investments and in particular, but not exclusively, the following payments:
 - (a) Investment income as defined in article I;
 - (b) Compensation under article V;
 - (c) Compensation under article VI;
 - (d) Proceeds from the sale or total or partial liquidation of investments;
 - (e) Sums required for the repayment of loans connected with an investment;
 - (f) Sums required for the purchase of raw materials or secondary materials or semi-manufactured or finished goods, or for the replacement of capital goods, or any other sums necessary for the maintenance and development of the investment;
 - (g) Wages, salaries and other remuneration received by persons who are not nationals of the Contracting Party receiving the investment who provide services in connection with an investment as administrators, advisers, or technical or specialized personnel.
2. The Contracting Party receiving the investment shall guarantee to investors of the other Contracting Party, in a non-discriminatory manner, the possibility of acquiring the necessary foreign exchange for making the transfers referred to in this article.
3. The transfers referred to in this Agreement shall be made without delay in the convertible currency chosen by the investor and at the exchange rate applicable on the day of the transfer.
4. The Contracting Parties undertake to facilitate, when necessary, the procedures for making such transfers without delay or restriction, in accordance with the practices of international financial centres. In particular, no more than three months may elapse from the date on which

an investor submits in due order the necessary applications for making a transfer and the time at which such transfer is actually made.⁶⁶

62. Venezuela's exchange regime laws described herein prevented Clorox Spain from freely transferring payments in connection with its investment. Clorox Venezuela was not free to make any requests for foreign currency for the purpose of servicing its debt, repatriating proceeds or paying royalties. These restrictions on the free transferability of investment proceeds are in breach of Article VII of the BIT.

V. AGREEMENT TO ARBITRATE

63. Article XI of the BIT provides, in relevant part, that, in the event of a dispute between a Spanish investor and Venezuela concerning Venezuela's obligations under the BIT:

1. The details of any dispute which may arise between an investor of one Contracting Party and the other Contracting Party concerning the fulfilment by that Party of the obligations established in this Agreement shall be notified in writing by the investor to the Contracting Party receiving the investment. As far as possible, the parties to the dispute shall try to settle their differences by amicable agreement.
2. If a dispute cannot be settled in this way within a time limit of six months from the date of the written notification referred to in paragraph 1, it shall be submitted, at the investor's choice:
 - (a) To the competent courts of the Contracting Party in whose territory the investment was made, or
 - (b) To the International Centre for Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature in Washington on 18 March 1965, provided that both States parties to this Agreement have acceded to the Convention. If either Contracting Party has not acceded to the Convention, recourse shall be had to the Additional Facility for the administration of conciliation, arbitration and fact-finding procedures by the ICSID secretariat.
3. If for any reason the arbitral bodies referred to in paragraph 2(b) of this article are not available, or if the two parties so agree, the dispute shall be submitted to an ad hoc court of arbitration

⁶⁶

Exhibit C-02, BIT Article VII.

established in accordance with the arbitration rules of the United Nations Commission on International Trade Law.⁶⁷

A. Clorox Spain Is an Investor Under the BIT, Entitled to Submit the Present Dispute to Arbitration

64. Article 1(1) of the BIT defines investor in the following terms:

1. The term "investor" means:

...

(b) Any juridical person, including companies, groups of companies, trading companies, subsidiaries, and other organizations which are constituted or, in any case, duly organized according to the law of that other Contracting Party, as well as jurídica! persons constituted in one Contracting Party but effectively controlled by investors of the other Contracting Party.

65. For purposes of the Spain-Venezuela BIT, Clorox Spain is a Spanish investor because it is a juridical person—a company—constituted in accordance with the laws of Spain, one of the Contracting Parties. Accordingly, Clorox Spain is entitled to all of the benefits of the BIT, including the right to bring the arbitration against the other Contracting Party (Venezuela) as provided under Article XI of the BIT.

B. Clorox Spain Notified Venezuela of the Dispute and the Claim Under the BIT

66. On November 7, 2014, Clorox Spain served the Notice of Intent to Submit a Claim to Arbitration under Spain-Venezuela BIT ("Notice of Intent") by hand delivery to the Attorney General of Venezuela and to the Minister of the Popular Power of Foreign Affairs.⁶⁸ On November 17, 2014, Clorox Spain served originals of the Notice of Intent by hand delivery to the Attorney General of Venezuela and to the Minister of Foreign

⁶⁷ Exhibit C-02, BIT Article XI.

⁶⁸ Exhibit C-29, Notice of Intent to Submit a Claim to Arbitration under the Agreement Between the Kingdom of Spain and the Bolivarian Republic of Venezuela on the Reciprocal Promotion and Protection of Investments submitted by Clorox Spain S.L., ("Notice of Intent") dated November 7, 2014 and stamped as received by the Attorney General of Venezuela and the Minister of the Popular Power of Foreign Affairs offices on that same date. Clorox Spain also served courtesy copies of the Notice of Intent by hand delivery to the President of Venezuela, the Vice-President of Venezuela, the Minister of the Popular Power of Commerce, the Minister of the Popular Power of Industries, the Minister of Popular Power of Social Process and Work, and the Commerce Manager of *Suministros Venezolanos Industria/es C.A.* *Id.* at 21, 22.

Affairs.⁶⁹ Thereafter, on December 30, 2014, Clorox Spain sent a letter to both the Attorney General of Venezuela and the Minister of the Popular Power of Foreign Affairs, which, among other things, reiterated Clorox Spain's willingness to seek an amicable resolution of the dispute and invited Venezuela to engage in discussions.⁷⁰ All of these communications were served in English and Spanish.

67. Venezuela never responded to Clorox Spain's invitation to engage in discussions to seek an amicable resolution of this dispute. Thus, Claimant has no choice but to exercise its right to commence the present arbitration. More than six months have passed since the Notice of Intent was given to Venezuela, and as such, the requirement contained in Article XI(2) of the Spain-Venezuela BIT has been met.

C. Clorox Spain May Submit the Present Dispute to an Arbitration Under the UNCITRAL Rules

68. Article XI(2)(b) of the BIT sets forth that an investor may choose to submit its dispute to the International Centre for Settlement of Investment Disputes ("ICSID") established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965 (the "ICSID Convention") if both States parties to this Agreement "have acceded" to the ICSID Convention.⁷¹ If either State "has not acceded to the Convention," an investor may resort to the ICSID Additional Facility.⁷² If neither forum is available, the dispute "shall be submitted to an ad hoc court of arbitration established in accordance with the arbitration rules of the United Nations Commission on International Trade Law."⁷³
69. For the reasons set forth below, neither ICSID nor the ICSID Additional Facility is available to resolve this dispute, such that Clorox Spain hereby submits its dispute to

⁶⁹ Exhibit C-30, Notice of Intent from Clorox Spain S.L., dated November 7, 2014 and stamped by the offices of the Attorney General for Venezuela and the Minister of the Popular Power of Foreign Affairs offices, November 17, 2014.

⁷⁰ Exhibit C-26, Letter from A. Hilt, Clorox Spain, S.L., to the Attorney General of Venezuela and R. Darlo Ramírez, Minister of the Popular Power of Foreign Affairs, December 30, 2014.

⁷¹ Exhibit C-02, BIT Article XI(2)(b).

⁷² *Id.*

⁷³ *Id.* at Article XI(3).

UNCITRAL *ad hoc* arbitration, pursuant to the 1976 UNCITRAL Arbitration Rules (the "UNCITRAL Rules").

70. First, both Spain and Venezuela "acceded" to the ICSID Convention, thereby rendering the ICSID Additional Facility-available only if either State "has not acceded to the Convention"-unavailable. Spain signed the ICSID Convention on March 21, 1994 and deposited its ratification of the Convention on August 18, 1994, with the Convention entering into force with respect to Spain on September 17, 1994.⁷⁴ Similarly, Venezuela signed the ICSID Convention on August 18, 1993 and deposited its ratification of the Convention on May 2, 1995, with the ICSID Convention entering into force with respect to Venezuela on June 1, 1995.⁷⁵ With both States having "acceded to" the ICSID Convention, the ICSID Additional Facility is no longer a viable option.
71. Nor is ICSID an available forum to Clorox Spain. Venezuela denounced the ICSID Convention on January 24, 2012, effective on July 25, 2012,⁷⁶ which now renders ICSID unavailable to Claimant today.
72. With neither ICSID nor the ICSID Additional Facility available to Claimant, Article XI(3) of the BIT affords Claimant the right it now exercises to submit the present dispute to arbitration under the UNCITRAL Rules.

VI. NUMBER AND APPOINTMENT OF ARBITRATORS

73. Article XI of the BIT does not specify the number of arbitrators to hear and decide the dispute. Pursuant to Article 5 of the UNCITRAL Rules, Clorox Spain proposes that this dispute be adjudicated by a panel of three (3) arbitrators, one arbitrator to be appointed by Claimant, one by Respondent, and the President of the Tribunal to be chosen by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after the nomination by Venezuela of its party-appointed arbitrator.

⁷⁴ Exhibit C-31, Database of ICSID Member States, available at <https://icsid.worldbank.org/apps/ICSIDWEB/about/Pages/Database-of-MemberStates.aspx?tab=PtoT&rdo=BOTH&ViewMembership=All>

⁷⁵ Exhibit C-32, ICSID 2012 Annual Report at 15.

⁷⁶ *Id.* at 9.

74. Pursuant to Article 7 of the UNCITRAL Rules, Claimant hereby appoints Mr. Bernard Hanotiau as its party-appointed arbitrator. Mr. Hanotiau may be contacted at:

Bernard Hanotiau
JT Tower (9th Floor)
480 Avenue Louise - B9
1050 Brussels, Belgium

Tel: +32 (0)2 290 3909
Fax: +32 (0)2 290 3939
Email: bernard.hanotiau@hvdb.com

VII. PLACE OF ARBITRATION

75. Pursuant to article 16 of the UNCITRAL Rules:

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.
2. The arbitral tribunal may determine the locale of the arbitration within the country agreed by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
4. The award shall be made at the place of arbitration.

76. Clorox Spain respectfully requests that the Arbitral Tribunal fix Geneva as place of arbitration.

VIII. REQUEST FOR RELIEF

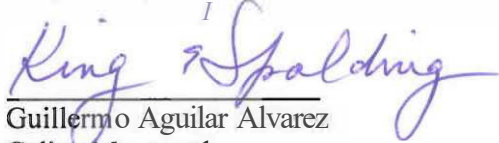
77. For the reasons stated herein, Clorox Spain respectfully requests an award granting the following relief:
- a) A declaration that Venezuela has breached the Spain-Venezuela BIT and international law, and in particular, that it has:

- (i) failed to accord Clorox Spain's investments fair and equitable treatment and treatment no less favorable than the treatment accorded to investments made by its own investors or by investors of any third state in violation of Articles IV(1) and IV(2) of the BIT and international law;
 - (ii) failed to accord Clorox Spain's investments full protection and security, and impaired them through unreasonable and discriminatory measures, in violation of Article III(I) of the BIT and international law;
 - (iii) indirectly and directly expropriated Clorox Spain's investments in violation of Article V of the BIT and international law; and
 - (iv) failed to guarantee Clorox Spain unrestricted transfer of payments in connection with its investment in violation of Article VII of the BIT;
- b) An award to fully compensate Clorox Spain for Venezuela's breaches of the BIT and international law in an amount to be determined at the appropriate stage in these proceedings, in any freely convertible currency accepted by Clorox Spain, plus pre- and post- award compound interest at a rate to be established, applicable until full payment of the award;
- e) An award to Clorox Spain for all of the costs of this arbitration proceeding, including the fees and expenses of the Tribunal, the fees and expenses of the institution which is selected to provide appointing and administrative services and assistance to this arbitration, the fees and expenses relating to Clorox Spain's legal representation, and the fees and expenses of any expert appointed by Clorox Spain or the Tribunal, plus interest; and
- d) Any other relief the Tribunal may deem just and proper.

78. Claimant reserves the right to amend or supplement the present Notice of Arbitration, to make additional claims, and to request such additional or different relief as may be appropriate, including conservatory, injunctive or other interim relief.

Date: May 18, 2015

Respectfully submitted,

A handwritten signature in blue ink that reads "King & Spalding". The signature is stylized, with the "K" and "S" being particularly prominent. There is a small "1" written above the "S".

Guillermo Aguilar Alvarez
Caline Mouawad
Fernando Rodriguez Cortina
Jessica Beess und Chrostin

King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, New York 10036
United States of America

On behalf of Claimant

