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Subject: Spence International Investments et al. v. Republic of Costa Rica (UNCT/13/2)
Date: Friday, February 10, 2017 12:34:55 PM

Dear Ms. Fleckenstein,

In brief response to Costa Rica's Letter dated 8 February 2017 (the "Letter") and the requests contained therein, the Berkowitz Claimants feel it necessary to express a few clarifications.

While the Letter takes issue with the Berkowitz Claimants' interpretation of CAFTA-DR §10.26(6)(b)(ii), it can cite no authority for its position. The position begs belief. Any attempt by the Tribunal to assert any opportunity to address any "outstanding issue" –meaning some were resolved– inherently requires an enforcement of the Interim Award as to the outstanding issues. Paucity of authority notwithstanding, the Letter necessarily relies on a request to turn a blind eye to the requirements of the next stage of this proceeding.

The Berkowitz Claimants are not seeking to litigate the terms of their Motion to Vacate or Set Aside the Interim Award (the "Motion") before this Tribunal. Rather, the relevant issue is the effect of the Motion. To the extent the Letter seeks to question the finality of the Interim Award, there is more than sufficient support for this position in the Motion, which the Letter at least recognizes by going out of its way to cite court decisions not binding on this Tribunal. Even the two sentences offered by the Letter are contradictory. On the one hand, the Letter argues that federal courts can only "review arbitral awards unless the awards purport to resolve finally the issues submitted to them." Certainly, there is no requirement to resolve "all" issues in order for the award to be sufficiently final, yet in the very next sentence, the Letter urges exactly this result—a strange juxtaposition, indeed. In any event, the Motion is firmly grounded in precedent and merely applies the finality recognized in pages 1 and 2 of the Letter. Any further discussion of the finality of the Interim Award could only be relevant to the extent that Costa Rica invites this Tribunal to reconsider its prior decision.

The Letter strangely complains about potential delays, then asserts that the Berkowitz Claimants must serve their Motion according to the Hague Convention. If Costa Rica takes this position, which it appears to have done, it is inviting another delay to the annulment proceeding that could force adopting a decision on annulment after the final award, creating untold amounts of uncertainty and waste of resources. The quickest way to resolve this issue is for Costa Rica to appear in court and make the arguments it feels so strongly about.

As to the Berkowitz Claimants' request for a stay in the District Court, the request reflects the suspension solicited in this proceeding. In order to avoid the circular defense that Costa Rica may attempt in the sense that only one tribunal has the authority to stay the action of the other, the Berkowitz Claimants have made their request for a stay in both tribunals. They will certainly honor the first stay request granted and suspend the other, leaving the proceedings where they should be — paused.

On a separate note, the Berkowitz Claimants have attached herewith their response to the disclosure made by the President of the Tribunal, which they request you transmit to the Tribunal, along with the response above.

Best regards,

Diego Brian Gosis

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