

**PCA Case No. 2023-37**

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – COLOMBIA  
TRADE PROMOTION AGREEMENT, ENTERED INTO FORCE ON 15 MAY 2012  
(the “TPA”)**

**- and -**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW, AS REVISED IN 2021 (the “UNCITRAL Rules”)**

**- between -**

**SEA SEARCH-ARMADA, LLC (USA)**

**(the “Claimant”)**

**- and -**

**THE REPUBLIC OF COLOMBIA**

**(the “Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 2**

**Protocol and Schedule for  
Hearing on TPA Article 10.20.5 Objections**

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*Arbitral Tribunal*

Mr. Stephen Drymer (Presiding Arbitrator)  
Mr. Stephen Jagusch KC  
Dr. Claus Von Wobeser

*Registry*

Permanent Court of Arbitration

**8 December 2023**

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## **1. Procedural Background**

- 1.1 The Tribunal issued Procedural Order No. 1 on 22 August 2023 (“**PO1**”). In PO1, the Tribunal (i) established the rules of procedure of the arbitration; and (ii) fixed a procedural calendar for submissions on the Respondent’s objections pursuant to Article 10.20.5 of the TPA (the “**Procedural Calendar**”), leading to a hearing in Bogotá, Colombia on 14 December and 15 December 2023 (the “**Hearing**”).
- 1.2 On 15 November 2023, the Tribunal circulated a draft of this Procedural Order and invited the Parties’ comments thereon. The Parties submitted their comments on 2 December 2023.
- 1.3 Also on 2 December 2023, in accordance with Sections 10.2 and 10.3 of PO1, the Parties filed with the Tribunal (i) a proposed daily hearing schedule; and (ii) an agreed list of proposed issues. Finally, on 5 December 2023, the Parties filed with the Tribunal a joint *dramatis personae*.
- 1.4 On 6 December 2023, the Tribunal, the Parties and the PCA held a pre-hearing conference during which the terms of the present Procedural Order were discussed.

## **2. The Tribunal’s Determinations**

- 2.1 This procedural order records the Parties’ agreements concerning procedural and other technical and ancillary matters pertaining to the Hearing and the decisions adopted by the Tribunal, having taken into account the Parties’ views on such matters where the Parties have been unable to reach an agreement.
- 2.2 Unless otherwise noted below, the rules applicable to hearings set out in PO1 shall apply to the organization of the Hearing.

## **3. Dates, Venue and Format of the Hearing**

- 3.1 The Hearing shall take place from Thursday, 14 December 2023 to Friday, 15 December 2023.
- 3.2 The Hearing shall be held in person at the *Centro de Arbitraje y Conciliación* of the Bogotá Chamber of Commerce, Calle 76 # 11-52, Colombia. There will be a hearing room with an interpretation booth and break-out rooms for the Claimant, the Respondent and the Tribunal, respectively. The hearing room will be set-up with video camera, a projector, screens of various sizes, microphones, transcription services, and a video conferencing system powered by Cisco Webex. This equipment can be used to record the hearing sessions both in audio and video. A wireless internet connection will also be available in all rooms for the duration of the Hearing.

## **4. Participants**

- 4.1 Access to the hearing facility and live transcripts shall be restricted to the members of the Tribunal and their Assistant, the Parties’ representatives and counsel, PCA staff, court reporters, interpreters and any further technical support personnel retained by the PCA in connection with the Hearing (the “**Participants**”). Non-Participants may follow the Hearing through a separate public webcast that will be accessible on the PCA’s website, as foreseen in Section 12.1 below.
- 4.2 The Parties provided a final list of their respective Participants (with an indication of affiliation and position) on Friday, 1 December 2023. The Respondent provided an updated list on 4 December 2023.

## 5. Hearing Schedule

- 5.1 Except where otherwise decided by the Tribunal, the timing of the Hearing shall be as follows:
- 5.1.1 Commence each day at 9:00 AM Colombia time (“COT”).
  - 5.1.2 Conclude at 6:00 PM COT on Thursday, 14 December 2023 (Day 1) and at 1:00 PM COT on 15 December 2023 (Day 2).
  - 5.1.3 The total time for Day 1 shall be 9 hours, with three breaks of 10, 5 and 15 minutes each (two in the morning, one in the afternoon) and a one-hour lunch break for a total of 7 hours and 30 minutes of hearing time.
  - 5.1.4 The total time for Day 2 shall be 4 hours, with one break of 30 minutes, for a total hearing time of 3 hours and 30 minutes.
  - 5.1.5 The Parties should prepare on the basis that up to 90 minutes each day will be devoted to Tribunal questions, procedural matters, potential technical interruptions, or other contingencies.
- 5.2 The full schedule for the Hearing is included in **Annex 1** to this Order and is subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing. In particular, the Tribunal may adjust the schedule of the Hearing as it deems necessary in order to ensure the fair and efficient conduct of the Hearing and to ensure that each Party has a fair opportunity to present its case.
- 5.3 The Tribunal has consulted the United States on whether it expects to make an oral submission at the Hearing as a non-disputing party pursuant to Article 10.20.2 of the TPA. On 22 November 2023, the United States requested that a short time period after the Parties’ opening statements be reserved for a potential oral submission. The annexed Hearing schedule, accordingly, allocates 15 minutes for an oral submission by the United States on Day 1.
- 5.4 Regarding **Time Allocation**:
- 5.4.1 Hearing time shall be divided equally between the Parties, subject to the Tribunal’s directions. The PCA will keep a chess clock under the Tribunal’s supervision and advise the Parties daily of the time used after each day of the Hearing or whenever so requested.
  - 5.4.2 In accordance with the daily schedule, each Party may use a maximum of 4 hours during the Hearing.
  - 5.4.3 Time spent on discussions related to a procedural objection put forward by a Party shall be deducted from the time allocated to the Party against whom the objection is decided.
  - 5.4.4 Time spent in discussions concerning administrative matters or addressing technical contingencies and time used by the Parties responding to questions put forward by the Tribunal shall not be deducted from the Parties’ allocated time.
  - 5.4.5 The members of the Tribunal may intervene or put forward questions to the Parties at any time it considers appropriate.

5.5 Regarding **Oral Arguments**:

- 5.5.1 The order of the oral submissions for the Hearing is set out in **Annex 1** to this Order.
- 5.5.2 Each Party shall have a maximum of 4 hours to present its opening and closing statements and any rebuttal(s), with a maximum 3 hours for the opening statement on Day 1 and a maximum of 1 hour for the closing statement on Day 2.
- 5.5.3 The Parties' opening statements will be followed by the oral submission by the United States on Day 1. Each Party may provide its oral response, if any, to the United States' oral submission as part of its closing statement on Day 2.
- 5.5.4 At the end of the hearing on Day 1, the Tribunal may choose to provide the Parties with a list of questions to address in the course of their submissions on Day 2.

**6. Interpretation**

- 6.1 Pursuant to Section 2.2.3.1 of PO1, oral testimony and argument before the Tribunal may be in either English or Spanish. The Tribunal and the Parties will be provided with interpretation into English and Spanish of oral arguments made at the Hearing.
- 6.2 Simultaneous interpretation to and from English and Spanish during the Hearing will be organized by the PCA and provided by Ms. Silvia Colla and Mr. Daniel Giglio. Interpretation will be made available on-site as well as on the public webcast foreseen in Section 12.1 below.
- 6.3 In order to facilitate simultaneous interpretation and the accurate transcription of the Hearing, the Parties may circulate any speaking notes or PowerPoint slides to the interpreters prior to the start of each relevant session. Participants are also encouraged to speak slowly and with pauses between sentences.

**7. Transcription**

- 7.1 In accordance with Section 2.2.3 of PO1, the PCA will make arrangements for English and Spanish *verbatim* transcripts to be made available on site. Worldwide Reporting will provide real-time transcription in English, while DR Esteno will provide real-time transcription in Spanish. If so requested, remote access to the live transcripts will also be made available for any Participants who wish to visualize the transcripts from their personal devices. Final transcripts will be circulated by e-mail at the end of each day.

**8. Recording**

- 8.1 The PCA will arrange to record the Hearing in both audio and video. The floor hearing will be recorded by the video conferencing system, which is powered by Cisco Webex. The Spanish and English channels will be recorded separately by *Law in Order*.
- 8.2 No other Participants other than the court reporters shall record any part of the Hearing, unless the Tribunal grants express leave to this effect.

**9. Evidence, Power Point Slides and Demonstrative Exhibits**

- 9.1 In accordance with Section 9.4 of PO1, the Parties may make use of PowerPoint slides and demonstrative exhibits during the Hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, and that the exhibit from which

the referred information originates is clearly identified in each presentation. Slides and demonstrative exhibits should refer to evidence or legal authorities already on the record. Each Party shall number its demonstrative exhibits consecutively.

- 9.2 The Parties shall provide electronic copies of any PowerPoint slides and demonstrative exhibits to be displayed during the Hearing by e-mail and through the Box folder created for this case to all other Participants (including the members of the Tribunal and their Assistant, opposing counsel, the PCA, the court reporters, the interpreters, and further technical support personnel retained by the PCA) at least 30 minutes prior to their use during the Hearing. No hard copies shall be required.
- 9.3 The Parties are encouraged to designate one person on each side who shall be responsible for presentation of evidence, authority or demonstrative exhibit during the Hearing (each a “**Document Manager**”). The Parties may also seek assistance from the technical support personnel retained by the PCA in presenting documents during the Hearing. The Parties shall notify the PCA whether they intend to use their own Document Manager for presentation of documents during the Hearing or if they would require assistance in this regard by **Friday, 1 December 2023**.
- 9.4 Pursuant to Sections 9.4 and 9.5 of PO1, no new evidence may be presented at the Hearing except with prior leave of the Tribunal and after an opportunity to hear from the other Party. Should the Tribunal grant leave to a Party to present new evidence in the course of the Hearing, it should grant the other Party the opportunity to introduce new evidence to rebut it.

## **10. Hearing Bundle**

- 10.1 In accordance with the Procedural Calendar, the Parties provided a hearing bundle to the Tribunal as foreseen under Section 9.6 of PO1 on Friday, 1 December 2023.

## **11. Post-Hearing Matters**

- 11.1 In accordance with the Procedural Calendar, and as agreed by the Parties, the Parties shall not file post-hearing briefs.
- 11.2 Notwithstanding Section 11.2 of PO1, in view of the deadline for issuance of the decision on the Respondent’s objections under Article 10.20.5 of the TPA, the Parties shall agree on any corrections to the transcripts no later than **Friday, 5 January 2024**.

## **12. Transparency**

- 12.1 Pursuant to Section 12.5 of PO1, the PCA shall make appropriate logistical arrangements to conduct hearings open to the public pursuant to Article 10.21(2) of the TPA. Accordingly, the PCA has retained *Law in Order* to arrange a public webcast of the Hearing on the PCA’s website.
- 12.2 Any Participant who intends to refer to confidential or protected information, or to information that could otherwise affect the integrity of the arbitral process during the Hearing, shall so inform the Tribunal prior to making any such reference. The Tribunal shall then direct the PCA to pause the webcast for the period of time that such confidential or protected information is being addressed.
- 12.3 The Parties have agreed to grant the Non-Disputing Party access to the Hearing, but not remote access to the live transcript of the Hearing.

12.4 The transcripts of the Hearing and its video recordings shall be made available to the public following the conclusion of the Hearing in accordance with Section 12.4 of PO1.

**13. Costs**

13.1 The costs of the Hearing shall be paid from the advance payments made by the Parties to the PCA.

13.2 Each Party shall be responsible for the costs associated with the preparation of its Participants for the Hearing, subject to the decision of the Tribunal as to which Party shall ultimately bear those costs.

**Place of Arbitration: London, United Kingdom**



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Mr. Stephen Drymer  
(Presiding Arbitrator)

On behalf of the Tribunal

**Annex 1: Hearing Schedule**

Subject to the Tribunal's orders while it is underway, the Hearing shall in principle unfold in the following manner:

<b>Submission</b>	<b>Time</b>
<b>Hearing Day 1 – Thursday, 14 December 2023 (9:00 am – 6:00 pm COT)</b>	
Opening and housekeeping matters	9:00-9:15 am (0:15)
Respondent's Opening Submissions	9:15-10:35 am (1:20)
<i>Break (10 min)</i>	10:35-10:45 am (0:10)
Respondent's Opening Submissions (continued)	10:45-11:45 am (1:00)
<i>Break (5 min)</i>	11:45-11:50 am (0:05)
Respondent's Opening Submissions (continued)	11:50 am-12:30 pm (0:40)
<i>Lunch Break</i>	1:30-2:30 pm (1:00)
Claimant's Opening Submissions	1:30-2:30 pm (1:00)
<i>Break</i>	2:30-2:45 pm (0:15)
Claimant's Opening Submissions (continued)	2:45-4:45 pm (2:00)
United States' Non-Disputing Party Submission	4:45-5:00 pm (0:15)
Tribunal Questions, if any, and Closing housekeeping for Day 1	5:00-6:00 pm (1:00)
<b>Hearing Day 2 – Friday, 15 December 2023 (9:00 am – 1:00 pm COT)</b>	
Housekeeping matters, if any	9:00-9:15 pm (0:15)
Respondent's Closing Submissions	9:15-10:15 pm (1:00)
<i>Break</i>	10:15-10:45 pm (0:30)
Claimant's Closing Submissions	10:45-11:45 pm (1:00)
Tribunal Questions and Concluding housekeeping	11:45-1:00 pm (1:15)