

PCA Case No. 2018-56

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – COLOMBIA
TRADE PROMOTION AGREEMENT, SIGNED ON NOVEMBER 22, 2006 AND ENTERED
INTO FORCE ON MAY 15, 2012**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (the “UNCITRAL Rules”)**

- between -

- 1. ALBERTO CARRIZOSA GELZIS**
- 2. FELIPE CARRIZOSA GELZIS**
- 3. ENRIQUE CARRIZOSA GELZIS**

(the “Claimants”)

- and -

THE REPUBLIC OF COLOMBIA

(the “Respondent”, and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 1

Tribunal

Mr. John Beechey CBE (Presiding Arbitrator)
Prof. Franco Ferrari
Mr. Christer Söderlund

Assistant to the Tribunal

Mr. Niccolò Landi

Registry

Permanent Court of Arbitration

January 29, 2019

1. Continuation in Force of Prior Orders

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

2. Place of Arbitration

- 2.1 Pursuant to the UNCITRAL Rules, having regard to the circumstances of the case, the place of arbitration is fixed at London, United Kingdom.
- 2.2 By agreement of the Parties, the application of Section 69 of the 1996 English Arbitration Act is expressly excluded.
- 2.3 Meetings and hearings may take place at other locations if so decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.

3. Language

- 3.1 The languages of the arbitration shall be English and Spanish, subject to the provisions below.
- 3.2 Oral testimony and argument before the Tribunal may be in either English or Spanish, subject to the control and approval of the Tribunal. The Parties will confer in advance of any hearing to determine the need of simultaneous interpretation (from English to Spanish and vice versa) at the hearing, and will inform the PCA accordingly so that it can make appropriate arrangements. The PCA will also, in consultation with the Parties, make arrangements for the production of English and, if the hearing involves simultaneous translation, Spanish *verbatim* transcripts.
- 3.3 Decisions, orders and awards of the Tribunal, written pleadings, memorials, expert opinions, witness statements, as well as applications to the Tribunal and official communications of more than 15 pages in length (other than routine procedural communications) between the Parties and the Tribunal and/or the Assistant to the Tribunal and the PCA, shall be made in English or in Spanish, as preferred, followed by a translation into the other language no later than four (4) weeks thereafter. Routine procedural communications shall be made in English or Spanish, as preferred, but shall be accompanied by an English translation if submitted in Spanish. Submissions and decisions related to document production will be in English only.
- 3.4 Claimants and Respondent shall each decide whether a translation into English of exhibits and legal authorities written in a language other than English is warranted under the circumstances. Translations may also be limited to all relevant excerpts together with such other portions of the document necessary to place such excerpts in proper context. A full English translation of any exhibits or legal authorities shall be made available by the Party producing it if the Tribunal so requests. Exhibits and legal authorities in English need not be translated.
- 3.5 Translations shall be accepted as accurate unless contested by the other Party, in which case the Parties shall attempt to reach agreement on the translation of the document and, if necessary, produce a certified translation. If no agreement is reached, the Tribunal shall take the corresponding decision, for which it may appoint a certified translator to have the document(s) in question translated.

3.6 Documents produced in response to requests or orders for production may be produced in their original language and need not be accompanied by a translation.

3.7 The Tribunal reserves the right to require a Party to translate any document in whole or in part.

4. Procedural Calendar

4.1 The procedural calendar is set forth in **Annex 1** to this order.

4.2 On or before the date of the deadline for any written submission, the Party in question shall send the submission, together with any witness statements and expert reports or opinions (but excluding other supporting documents and legal authorities), to the Tribunal, the Assistant to the Tribunal, the PCA and opposing counsel by e-mail in accordance with Section 11 of the Terms of Appointment.

4.3 To facilitate filing, citations, and word processing, all written submissions, including witness statements and expert reports or opinions, shall be provided as searchable Adobe Portable Document Format (“**PDF**”) files. Main submissions such as memorials, replies and rejoinders (not including witness statements and expert reports) shall be preceded by a hyper-linked table of contents.

4.4 Within one business day following the submission of a written submission and accompanying documents by e-mail, electronic copies of the written submission, all accompanying documents (including exhibits and legal authorities, which should be preferably filed as searchable PDF files) and a list describing each document by exhibit number, date and type of exhibit, (i.e., documentary evidence or legal authorities) shall be sent by courier to the Tribunal, the Assistant to the Tribunal, the PCA and opposing counsel in electronic form on a USB flash memory drive that is compatible with all major computer operating systems, including Microsoft Windows, Mac OS and Android. By the same deadline, the Parties shall also upload the written submission and all accompanying materials to a secure online document exchange platform, such as *Box Platform* or any other platform that provides similar services, to be jointly chosen by the Parties with the agreement of the Tribunal. The selected document exchange platform must be accessible to the Parties, the Tribunal, the Assistant to the Tribunal and the PCA. Any costs associated with establishing a secure document exchange platform shall be borne equally by the Parties. The Tribunal will decide upon the appropriate allocation of costs in respect of the document exchange platform at the time of fixing the costs of the arbitration.

4.5 No later than one month before the first day of any hearing, each Party shall send to Mr. Beechey, the Assistant to the Tribunal and the PCA a bundle containing copies of all of its written submissions (excluding factual exhibits and legal authorities), witness statements (excluding exhibits) and expert reports (excluding exhibits) dealing with issues to be addressed at that hearing, by courier, in A-5 format, double sided, spiral bound and in soft covers, **not** in ring binders. A file of exhibits, in A-5 format, loose leaf in ring binders, organized in chronological or other appropriate order, with a separate tab for each exhibit (where applicable), and preceded by a list describing each document by exhibit number, date, type of exhibit, author, and recipient (as applicable) shall be made available to Mr. Beechey at the hearing. A similar bundle (and file of exhibits) shall be made available by each Party to Prof. Ferrari at the hearing venue prior to the initiation of the hearing. Mr. Söderlund does not require any documents in hard copy.

4.6 Any simultaneous submission shall be made pursuant to Section 11.3 of the Terms of Appointment.

- 4.7 Unless otherwise provided, all time limits shall refer to 23:59 at the place of arbitration.
- 4.8 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons, provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.

5. Document Production

- 5.1 Each Party may request the production of documents from the other Party in accordance with the procedural calendar then in force. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set forth in the procedural calendar.
- 5.2 If the requested Party objects to production, it shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested. Subsequently, the requesting Party shall respond to each of the other Party's objections, indicating, with reasons, whether it disputes any such objection.
- 5.3 It is a premise of the document production phase of the arbitration that the Parties shall seek agreement on production requests to the greatest extent possible. In this regard, the Parties shall be guided by the *IBA Rules on the Taking of Evidence in International Arbitration 2010* as will be the Tribunal, to the extent that it is called upon to rule upon any requests which remain in dispute between the Parties pursuant to 5.3.3 below.
- 5.3.1 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this document production phase shall not be copied to the Tribunal.
- 5.3.2 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex 2**. The Parties shall use the model format throughout their exchange of requests, objections, and responses.
- 5.3.3 The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 5.3.4 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 5.4 Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal as an exhibit to one of its written submissions in accordance with the procedural calendar.
- 5.5 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

6. Evidence and Legal Authorities

- 6.1 In addition to the relevant articles of the UNCITRAL Rules and the provisions in the previous section of this Procedural Order in respect of document production, the Tribunal may use, as an additional guideline, the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, when considering matters of evidence.
- 6.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form. The Parties shall submit any documents only once, attached to their main written submissions. Documents that have already been submitted need not be submitted again as attachments to witness statements or expert reports, even if reference is made to those documents in such statements or reports.
- 6.3 In their rebuttal submissions (i.e., Reply and Rejoinder), the Parties shall submit additional written witness testimony, expert opinion testimony and documentary or other evidence only to respond to or rebut matters raised in the other Party's prior written submission, save that matters arise out of new evidence received through document production.
- 6.4 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any additional evidence which any Party seeks to introduce into the record that has not previously been adduced as part of the written submissions and supporting documentation of that Party, unless the Tribunal grants leave on the basis of exceptional circumstances, following a prior written, substantiated request, followed in turn by comments from the other Party. In the event of a request for leave by one of the Parties to submit additional or rebuttal evidence, that Party shall not attach to its request the documents it seeks to introduce into the record. Should the Tribunal grant leave for the submission of such evidence, the other Party shall have an opportunity to submit counter-evidence.
- 6.5 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimants shall begin with a letter "C" followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.6 Statements of fact witnesses or reports of experts shall be numbered separately as "CWS-" for Claimants' witness statements and as "CER-" for Claimants' expert reports, and "RWS-" for Respondent's witness statements and "RER-" for Respondent's expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]).
- 6.7 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimants shall begin with the letters "CLA" followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.8 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the extent to which any document is incomplete.

6.9 Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal in hard copy.

7. Witnesses

7.1 Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.

7.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions.

7.3 Each witness statement shall contain at least the following:

7.3.1 the name, date of birth, and present address of the witness;

7.3.2 a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;

7.3.3 a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;

7.3.4 a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and

7.3.5 the signature of the witness.

7.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been submitted with the written submissions. Should a Party wish to present any of its own witnesses or experts for examination at the hearing who have not been called by the Tribunal or the other Party, it shall request leave from the Tribunal.

7.5 Each Party shall be responsible for summoning each witness to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance, in which case the witness in question shall not appear in the hearing as a witness.

7.6 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.

7.7 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's or expert's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for that witness's or expert's failure to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.

7.8 Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award.

7.9 At any hearing, the examination of each witness shall proceed as follows:

- (a) the witness shall make a declaration of truthfulness;
- (b) although direct examination will be given in the form of witness statements, the Party presenting the witness may conduct a brief direct examination;
- (c) the adverse Party may then cross-examine the witness on matters relevant to the dispute including those specifically addressed or presented in the witness statement;
- (d) the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
- (e) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.

7.10 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:

- (a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
- (b) limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
- (c) direct that a witness be recalled for further examination at any time.

7.11 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements and prepare the examinations.

7.12 Unless the Parties agree otherwise, prior to his or her examination, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony.

8. Experts

8.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.

8.2 Expert reports shall be accompanied by any documents or information upon which the experts rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough, pursuant to Section 6.2 of this Procedural Order No. 1.

8.3 The provisions set out in relation to witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.

8.4 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

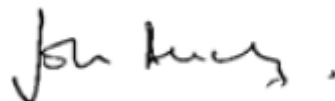
9. Hearings

- 9.1 After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
- 9.2 Hearings shall be recorded and shall be transcribed in English and Spanish with real time interpretation, using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.
- 9.3 No new evidence may be presented at the hearing except with leave of the Tribunal. PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party 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. The Party submitting demonstrative exhibits shall provide hard and electronic copies to opposing counsel, the Members of the Tribunal, the Assistant to the Tribunal, the PCA, the court reporter and, if applicable, the interpreters, at a time to be decided during the pre-hearing conference.
- 9.4 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. Confidentiality/Transparency

- 10.1 Pursuant to the agreement of the Parties, the arbitration shall be conducted in accordance with the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration, as adopted by UNCITRAL on July 11, 2013 (the “**UNCITRAL Transparency Rules**”), in accordance with Article 1(2)(a) thereof, with the PCA assuming the role of the “repository” foreseen under the UNCITRAL Transparency Rules with respect to this arbitration.
- 10.2 The PCA shall make information and documents regarding the arbitration available to the public in accordance with the UNCITRAL Transparency Rules, except as otherwise decided by the Tribunal pursuant to the UNCITRAL Transparency Rules.
- 10.3 Hearings shall be public except as otherwise decided by the Tribunal in accordance with the UNCITRAL Transparency Rules.

Place of Arbitration: London



Mr. John Beechey CBE
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Procedural Calendar

| Description | By | Days | Dates |
|--|--------------------------|-------------|-----------------------------------|
| 1. First Procedural Meeting | All | n/a | January 16, 2019 |
| 2. Claimants' Memorial on Jurisdiction, with any Witness Statement(s) and Expert Report(s) | Claimants | 90 | April 16, 2019 |
| 3. Respondent's Answer on Jurisdiction, with any Witness Statement(s) and Expert Report(s) | Respondent | 90 | July 15, 2019 |
| 4. Claimants' Reply to Respondent's Answer, with any Reply Witness Statement(s) and Expert Report(s) | Claimants | 45 | August 29, 2019 |
| 5. Respondent's Rejoinder, with any Rejoinder Witness Statement(s) and Expert Report(s) | Respondent | 47 | October 15, 2019 |
| 6. Notification of witnesses and experts for the examination at the Hearing | Claimants and Respondent | 30 | November 14, 2019 |
| 7. Pre-Hearing conference call | All | 32 | December 16, 2019 |
| 8. Hearing on Jurisdiction | All | 28 | Week commencing January 13, 2020. |

Annex 2: Model Redfern Schedule for Document Requests

| No. | Documents or category of documents requested (requesting Party) | Relevance and materiality, incl. references to submission (requesting Party) | | Reasoned objections to document production request (objecting Party) | Response to objections to document production request (requesting Party) | Decision (Tribunal) |
|-----|---|--|----------|--|--|---------------------|
| | | References to Submissions, Exhibits, Witness Statements or Expert Reports | Comments | | | |
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