

11 March 2016

Chief of International Trade Negotiations
Ministry of Commerce and Industry
Panama P.O. Box 0815-01119
Panama, Republic of Panama

VIA EMAIL TO: dvillarreal@mici.gob.pa;
AND EXPRESS MAIL: DHL# 36 7739 1185

Re: Notice of Intent to submit claims to arbitration under the United States-Panama Trade Promotion Agreement

Omega Engineering LLC (“**Omega-U.S.**”) is a U.S. company registered under the laws of the Commonwealth of Puerto Rico on 27 March 1980. It is located at 1521 Alton Road #878, Miami Beach, FL 33139, United States of America. On 27 May 2010, Omega-U.S. became registered to conduct business in Panama. Omega-U.S. is a full-service general contractor engaged in the construction business and specializes in large-scale, complex, institutional and commercial projects in the Caribbean and Central America. On 26 October 2009, the President of Omega-U.S., Mr. Oscar Rivera (“**Mr. Rivera**”) registered Omega Engineering Inc. (“**Omega-Panama**”) in Panama. Omega U.S. and Omega Panama are herein collectively referred to as “**Omega.**”

Since 2008, Omega has made investments in Panama—many of which were made in connection with preparing and presenting competitive bids for infrastructure projects, mainly for the Government of Panama (“**Government**” or “**Panama**”). Omega presented offers for over 58 projects of which it won and was ultimately awarded ten of them by the respective Government Agencies. Omega committed substantial amounts of capital and resources to perform its obligations in these Contracts.

In eight of those ten projects, however, Panama has breached its international obligations despite the fact that Omega has made significant investments, complied with its contractual requirements for each of those projects, and provided Panama ample time to cure its breaches to no avail. Instead, since the inauguration of the newly elected Government on 1 July 2014, Panama has systematically neglected its obligations under all Contracts with Omega. For the last twenty months, Omega has been trying to resolve these disputes through direct consultation and negotiation with Panama, again to no avail. Of these eight projects where Panama is in breach,¹

¹ The six investments made by Omega before the entry into force of the TPA where Panama is in breach of its international obligations are listed below:

- MINSa CAPSi Río Sereno – Contract No. 077 (2011);
- MINSa CAPSi Kuna Yala – Contract No. 083 (2011);
- MINSa CAPSi Puerto Caimito – Contract No. 085 (2011);

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the following two investments were made by Omega after the entry into force of the United States-Panama Trade Promotion Agreement (“TPA”).²

On 24 January 2013, Omega and Panama entered into a contract³ for construction of a building to host the municipal hall and mayoral offices in Ciudad de Colón, Panama. The total Contract value of the project is US\$16,050,000. Omega completed all studies, plans and specifications, and built the required temporary facilities for the relocation of the offices currently occupying the project site, which represent approximately 35% of the scope of work under the Contract. Since its inception, however, Panama has committed multiple breaches in relation to this Contract. For almost six months from the issuance of the order to proceed for this project, Panama failed to provide access to the site for the temporary facilities, which hindered Omega’s ability to perform its obligations under the Contract and prevented the completion of the temporary facilities, a prerequisite to vacate the site where the new building would be built. Panama also refused to issue the corresponding construction permits to allow Omega to commence construction of the actual building and to pay Omega according to the Contract.

Further, three weeks after the new Government took office, on 23 July 2014, Panama instructed Omega to move the project to a different site from the one contemplated in the Contract and to prepare new plans and specifications to accommodate the project to the new site. On 27 August 2014, Omega diligently presented to Panama its proposal for the change of site. Despite several attempts by Omega to obtain a formal response to its proposal, Panama did not respond until 2 March 2015. Even then, after approximately fifteen out of the total twenty-four months of the term of the Contract had already elapsed, Panama communicated to Omega that it did not own the new site and that a formalization of an amendment to the Contract was necessary to take into account the relocation of the project. To date, Panama: (i) refuses to pay US\$1,852,895 of overdue duly authorized payment applications; (ii) has not approved Omega’s proposed conceptual plans for the new site; (iii) has not resolved the existing legal, financial, technical, and physical issues that impede the performance of the Contract; and (iv) refuses to execute an amendment to adjust the Contract time and price to compensate Omega for delays and additional costs resulting out of Panama’s numerous breaches.

The second investment commitment by Omega in Panama after the TPA came into force occurred on 12 September 2013, when Omega and Panama entered into a contract⁴ for construction of two public markets in Panama City, Panama. The Contract value of the project was US\$1,955,650. Panama neglected its obligations under the Contract and withheld payment on all invoices presented by Omega (except the agreed initial deposit). In spite of this, Omega completed approximately 76% of one of the markets and 53% of the second, until Panama instructed Omega

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- Mercado Público de la Ciudad de Colón – Contract No. 049 (2012);
 - Ciudad de las Artes, Curundú, Panamá – Contract No. 092-12 (2012);
 - Órgano Judicial La Chorrera – Contract No. 150/2012 (2012).

² These actions also violate Panama’s obligations under the United States-Panama Bilateral Investment Treaty (“BIT”), *entered into force* in 30 May 1991, *amended* 14 May 2001.

³ Contract 01-2013 dated 24 January 2013.

⁴ Contract 857/2013 dated 12 June 2013.

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to suspend work on one of the sites and Omega had to suspend work on the second site due to Panama's contractual breaches. To date, Panama: (i) refuses to pay US\$823,284 of overdue duly authorized payment applications; and (ii) refuses to make any decision that could enable the continuation of work under the Contract or that would clarify the status of Omega's rights under the Contract.

In addition to Panama's breaches of its obligations in the two aforementioned investments, Panama instituted unfounded criminal investigations against Mr. Rivera. Although no charges have been filed against Mr. Rivera, Omega, or any of Mr. Rivera's companies, Panama issued a detention order in Panama on 25 August 2015 to arrest Mr. Rivera due to an alleged flight risk. Then, a few days after the detention order was issued, the prosecutor filed an Interpol Red Notice against Mr. Rivera, again alleging Mr. Rivera was a flight risk.

Panama's actions against Omega and Mr. Rivera (i) destroyed Mr. Rivera's investments both in Panama and outside of Panama; (ii) severely damaged Mr. Rivera's personal and professional reputation; (iii) damaged Omega's reputation, goodwill, bonding capacity, and ability to secure financing; (iv) prevented Mr. Rivera from traveling outside of the United States, thus severely preventing Mr. Rivera from conducting business, protecting and managing his investments, and visiting his family and friends; and (v) hindered Mr. Rivera's ability to generate income and earn a living. The above actions by Panama caused substantial loss, including expected future profits to Mr. Rivera, Omega-U.S., and Omega-Panama (collectively the "**Investors**") estimated in many millions of dollars. No prompt, adequate and effective compensation was ever offered or paid by the Republic to reimburse for this loss.

This treatment of the Investors by Panama violated the investment protections and guarantees accorded to investors of the United States of America in the TPA,⁵ including without limitation:

- a) Panama's obligation to provide Omega with Most-Favored-Nation Treatment under **Article 10.4**;
- b) Panama's obligation to provide Omega with fair and equitable treatment and full protection and security under **Article 10.5**;
- c) Panama's obligation to not expropriate Omega's investments, either directly, or indirectly, without a public purpose, in a non-discriminatory manner, without payment of prompt, adequate, and effective compensation, and in accordance with due process under **Article 10.7**.

The Investors now seek recourse to the protections of the TPA to restore their rights and receive compensation for the losses they suffered as a result of Panama's actions and omissions.

⁵ These actions also violate Panama's obligations under the BIT.

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Please be advised that, pursuant to **Article 10.16** of the TPA,⁶ and without waiving any of its rights, Mr. Oscar Rivera. respectfully submits to the Republic of Panama this written notice of the intent of the Investors to submit the abovementioned claims to arbitration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Oscar I. Rivera", is enclosed within a blue oval. The signature is stylized and somewhat cursive.

Oscar I. Rivera
1521 Alton Road #878
Miami Beach, FL 33139
United States of America

⁶ United States-Panama Trade Promotion Agreement, *entered into force* 31 October 2012.