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Settlement of commercial disputes

Transparency in treaty-based investor-State arbitration

Comments by the International Centre for Settlement of Investment Disputes (ICSID)

Note by the Secretariat

In preparation for the fifty-fifth session of Working Group II (Arbitration and Conciliation), during which the Working Group is expected to continue its work on the preparation of a legal standard on transparency in treaty-based investor-State arbitration, the International Centre for Settlement of Investment Disputes (ICSID) provided, on 5 August 2011, information to the Secretariat regarding its rules and practices in the field of transparency. The text of the ICSID comments is reproduced as an annex to this note in the form in which it was received by the Secretariat.



Annex - ICSID Comments

1. The International Centre for Settlement of Investment Disputes (ICSID) herein provides a description of its practice with transparency in treaty-based investor-State arbitration in light of the Secretariat's document A/CN.9/WG.II/WP.166 and its addendum.¹

2. ICSID was established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention). Currently, there are 147 ICSID Contracting States. The provisions of the ICSID Convention are complemented by Regulations and Rules adopted by the Administrative Council of the Centre and comprise the Administrative and Financial Regulations, the Rules of Procedure for the Institution of Proceedings, the Rules of Procedure for Conciliation Proceedings and the Rules of Procedure for Arbitration Proceedings (the Arbitration Rules).

3. Under the ICSID Convention, the Centre provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. The Administrative Council of the Centre has also adopted Additional Facility Rules (the AF Rules) authorizing the Secretariat of ICSID to administer certain categories of proceedings between States and nationals of other States that fall outside the scope of the ICSID Convention. These rules may be used when one of the parties is not a Contracting State or a national of a Contracting State (such as Canada or Mexico for example) or when at least one of the parties is a Contracting State or a national of a Contracting State for the settlement of disputes that do not arise directly out of an investment, provided that the underlying transaction is not an ordinary commercial transaction.

4. ICSID also administers arbitration proceedings governed by the UNCITRAL Arbitration Rules on an *ad hoc* basis such as in the context of NAFTA.

1. Initiation of arbitral proceedings

5. In accordance with Regulation 22(1) of the Administrative and Financial Regulations (the Regulations) “[t]he Secretary-General shall appropriately publish information about the operation of the Centre, including the registration of all requests for conciliation or arbitration and in due course an indication of the date and method of the termination of each proceeding.”

6. Similarly, pursuant to Regulation 23(1), “[t]he Secretary-General shall maintain, in accordance with rules to be promulgated by him, separate Registers for requests for conciliation and requests for arbitration. In these he shall enter all significant data concerning the institution, conduct and disposition of each proceeding, including in particular the method of constitution and the membership of each Commission, Tribunal and Committee. On the Arbitration Register he shall also enter, with respect to each award, all significant data concerning any request

¹ Dated 29 July 2011.

for the supplementation, rectification, interpretation, revision or annulment of the award, and any stay of enforcement.”

7. In accordance with the above, upon registration of a request for conciliation, arbitration, an application for post-award remedies under the ICSID Convention or upon granting access to the Additional Facility Rules, the Centre indicates on its website² the date of registration of the request or application, the name of the parties and the subject matter of the dispute. The Centre updates information as required by Regulation 23 throughout the proceedings. Updates are made daily. The Centre also opens a register for each case which contains similar information that is now available on its website. (See Annex 1 to this document for an actual example of available procedural details and information available for a proceeding on the ICSID website.)

2. Publication of documents and arbitral awards

8. Pursuant to Regulation 22(2), “[i]f both parties to a proceeding consent to the publication of: (a) reports of Conciliation Commissions; (b) arbitral awards; or (c) the minutes and other records of proceedings, the Secretary-General shall arrange for the publication thereof, in an appropriate form with a view to furthering the development of international law in relation to investments.”

9. Regarding documents submitted by the parties to the arbitral tribunal, minutes or records of proceedings, the Centre does not post those documents on its website unless both parties have agreed to do so.³

10. Regarding documents issued by the arbitral tribunal, Article 48(5) of the ICSID Convention provides that “[t]he Centre shall not publish the award without the consent of the parties” and Arbitration Rule 48(4) specifies that “[t]he Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal.” AF Arbitration Rule 53(3) contains a similar provision.

11. On that basis, the practice of the Centre is to request the parties’ advance consent to publication at the time of the first session. If the parties do not consent, ICSID requests their consent when a tribunal issues a specific decision or an award. This practice has also been extended in some cases to procedural orders. If a party does not consent to the publication by the Centre, ICSID will publish excerpts of the legal reasoning of the award, any decision deemed to be part of the award and decisions concluding post-award remedies proceedings. These are published in the *ICSID Review—Foreign Investment Law Journal* and on the website.

² INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, <http://icsid.worldbank.org>. All of the decisions, orders and awards referred to herein are available on the ICSID website, unless otherwise specified.

³ See *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, in which the parties’ submissions in the arbitration proceedings were posted on the ICSID website upon their request although the respondent had reserved its right to redact its submissions for purposes of deleting sensitive information before publication.

12. ICSID commenced a project in 2010 to make more ICSID “jurisprudence” publicly available. The purpose of the publication project is to provide access to as much ICSID case law as possible, including procedural and substantive rulings. To that end, the Secretariat has been contacting parties in concluded cases to seek their authorization to publish decisions, orders and awards not yet published by the Centre. This case law is posted on the Centre’s website if both parties agree to publication. ICSID is aware that parties may view some information as confidential, in which case it seeks their consent to publish the rulings with appropriate extracts and a general description of the relevant information, in lieu of the full text of the ruling. With the consent of the parties, the Centre was thus able to publish more awards, decisions, and orders on its website.

13. The above provisions that are applicable to the Centre do not prevent a disputing party from releasing case-related documents that are not subject to any confidentiality agreement or to a confidentiality order.⁴ There is no prohibition *per se* against the parties’ releasing such information as the Convention and the AF Rules do not contain any general requirement of confidentiality or privacy as might be found in other arbitration rules. Conversely, there is no requirement of transparency. Generally speaking, a practice has emerged in cases according to which the parties enter into confidentiality agreements whereby they agree that some documents be considered confidential and/or ought to be redacted for the purpose of the proceedings and/or ought not to be made public. When the parties do not agree, the tribunal may rule on the matter if requested.⁵ There have been instances where a party has asked a tribunal to prevent the other party from releasing information and case documents so as not to prejudice the integrity of the proceeding or to exacerbate the dispute. Some tribunals dealing with such a request have directed the parties not to publicly release case documents, while others have allowed such publication.⁶

14. Finally, in accordance with ICSID Arbitration Rule 6(2) and AF Arbitration Rule 13(2), arbitrators are bound to keep confidential all information coming to their knowledge as a result of their participation in the proceedings, including the content of the award. In accordance with ICSID Arbitration Rule 16(1) and AF Arbitration Rule 23(1), deliberations of the tribunal are secret.

⁴ For Additional Facility cases and the practice of Canada and the USA, *see* UNCITRAL, Settlement of commercial disputes, Transparency in treaty-based investor-State arbitration, Comments of the Governments of Canada and of the United States of America on transparency in treaty-based investor-State arbitration under Chapter Eleven of the North American Free Trade Agreement (NAFTA), Fifty-fourth session, New York, (Feb. 7 – 11, 2011), U.N. Doc. A/CN.9/WG.II/WP.163 (Dec. 7, 2010).

⁵ *See, e.g., Giovanna a Beccara and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Procedural order No. 3 (Confidentiality Order) (Jan. 27, 2010) [*“Giovanna a Beccara Order”*].

⁶ *See, e.g., Biwater Gauff Tanzania (Ltd.) v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural order No. 3 (Sept. 29, 2006) (in which the Tribunal decided finally to order the parties to refrain from disclosing minutes of hearings, document produced in the proceedings, memorials and procedural correspondence.) *But see, Giovanna a Beccara Order, supra* note 5, para. 73 (in which the Tribunal decided the matter on a case by case basis trying “to achieve a solution that balances the general interest for transparency with specific interest for confidentiality of certain information and/or documents.”).

3. Submissions by non-disputing parties (“*amicus curiae*”) in arbitral proceedings.

15. A provision on submissions by non-disputing parties was introduced to the ICSID Arbitration Rules and AF Arbitration Rules by a 2006 amendment.⁷ Prior to that date, there was no express provision in the Rules allowing *amicus curiae* but some tribunals had allowed such submissions.

16. The first *amicus* request was submitted in *Methanex v. USA*, in which the Tribunal accepted such submissions in early 2001 notwithstanding the Claimant’s objections.⁸ This NAFTA case was administered by ICSID and governed by the 1976 UNCITRAL Arbitration Rules. The Tribunal relied on UNCITRAL Arbitration Rule 15(1), allowing a tribunal to conduct a proceeding in the manner it considers appropriate. This approach was adopted the same year by the Tribunal in *UPS v. Canada*.⁹ These cases were later followed by the issuance of guidelines by the NAFTA Free Trade Commission in October 2003 confirming a tribunal’s discretion to accept non-disputing party submissions.¹⁰

17. In proceedings under the ICSID Convention, the question of submissions by non-disputing parties was first raised in *Aguas del Tunari v. Bolivia* in 2002, in which the Tribunal rejected a request to file non-disputing party submissions holding that it did not have such power in the absence of consent by the parties.¹¹ However, in *Suez et al. v. Argentina*, the Tribunal held that it was entitled to do so based on its inherent powers under Article 44 of the ICSID Convention and because the case was deemed to involve matters of public interest.¹² In 2005, five NGOs filed *amicus* briefs in that case, notwithstanding the Claimants’ objections.¹³ The same reasoning was applied in another case against Argentina in March 2006.¹⁴

⁷ See Aurélia Antonietti, *The 2006 Amendments of the ICSID Rules and Regulations*, 21 ICSID REV.—FILJ 427 (2006). For a discussion on non-disputing party submissions and practical considerations, see Eloïse Obadia, *Extension of Proceedings Beyond the Original Parties: Non-Disputing Party Participation in Investment Arbitration*, 22 ICSID REV.—FILJ 349 (2007).

⁸ *Methanex Corporation v. United States of America*, UNCITRAL (NAFTA), Decision of the Tribunal on Petitions from Third Persons to Intervene as *Amici Curiae* (Jan. 15, 2001) available at US DEPARTMENT OF STATE, <http://www.state.gov/s/l/c5818.htm>.

⁹ *United Parcel Service of America Inc. v. Government of Canada*, UNCITRAL (NAFTA), Decision on *Amici Curiae* (Oct. 17, 2001) available at FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/disp-diff/parcel.aspx?lang=en>.

¹⁰ For more recent applications, see U.N. Doc. A/CN.9/WG.II/WP.163, *supra* note 4.

¹¹ *Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction, para. 17 (Oct. 21, 2005).

¹² *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Order in Response to a Petition for Transparency and Participation as *Amicus Curiae*, paras. 10-23 (May 19, 2005) [“*Suez Order 2005*”].

¹³ *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Order in Response to a Petition by Five Non-Governmental Organizations for Permission to make an *Amicus Curiae* Submission (Feb. 12, 2007) [“*Suez Order 2007*”].

¹⁴ *Suez, Sociedad General de Aguas de Barcelona S.A. and InterAguas Servicios Integrales del Agua S.A. v. Argentine Republic*, ICSID Case No. ARB/03/17, Order in Response to a Petition for Participation as *Amicus Curiae* (March 17, 2006) [“*Aguas Order*”].

18. It is also worth noting that Article 10.20.3 of CAFTA (2004) provides for non-disputing party submissions.¹⁵

19. In 2006, ICSID introduced a new provision in Arbitration Rule 37(2) which reads as follows:

“After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the “non-disputing party”) to file a written submission with the Tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the Tribunal shall consider, among other things, the extent to which:
(a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
(b) the non-disputing party submission would address a matter within the scope of the dispute;
(c) the non-disputing party has a significant interest in the proceeding.
The Tribunal shall ensure that the non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their observations on the non-disputing party submission.”

20. A similar provision was introduced under Article 41(3) of the ICSID Additional Facility Arbitration Rules.

21. Between 2006 and June 30, 2011, there have been 6 ICSID cases involving amicus applications¹⁶ and two CAFTA cases in which invitations were made for applications, *inter alia* through postings on the ICSID website, and in which submissions were filed.¹⁷ Recently, the following announcement was posted on the ICSID website:

“In accordance with Article 10.20.3 of the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA-US) and ICSID Arbitration Rule 37(2), the Tribunal invites any person or entity that is not a Disputing Party in these arbitration proceedings or a Contracting Party

¹⁵ Dominican Republic-Central America-United States Free Trade Agreement (Jan. 28, 2004), 43 I.L.M. 514 (2004) at art. 10.20.3 (“*The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.*”). Article 10.20 CAFTA establishes a distinction between a non-disputing Party, *i.e.* a contracting State Party to CAFTA which may make oral and written submissions to the tribunal regarding the interpretation of the Agreement but that is not a disputing party to the dispute, and a non-disputing party.

¹⁶ *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22; *Piero Foresti, Laura de Carli and others v. Republic of South Africa*, ICSID Case No. ARB(AF)/07/1; *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20; *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19; *AES Summit Generation Limited v. Republic of Hungary*, ICSID Case No. ARB/01/4; and *Caratube International Oil Company LLP v. Republic of Kazakhstan*, ICSID Case No. ARB/08/12.

¹⁷ *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12; *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador*, ICSID Case No. ARB/09/17.

to DR-CAFTA-US to make a written application to the Tribunal for permission to file submissions as an *amicus curiae*.

All such written applications should:

- (1) be emailed to ICSID at icsidsecretariat@worldbank.org by Wednesday, 2 March 2011;
- (2) in no case exceed 20 pages in all (including the appendix described below);
- (3) be made in one of the languages of these proceedings, i.e. English or Spanish;
- (4) be dated and signed by the person or by an authorized signatory for the entity making the application verifying its contents, with address and other contact details;
- (5) describe the identity and background of the applicant, the nature of any membership if it is an organization and the nature of any relationships to the Disputing Parties and any Contracting Party;
- (6) disclose whether the applicant has received, directly or indirectly, any financial or other material support from any Disputing Party, Contracting Party or from any person connected with the subject-matter of these arbitration proceedings;
- (7) specify the nature of the applicant's interest in these arbitration proceedings prompting its application;
- (8) include (as an appendix to the application) a copy of the applicant's written submissions to be filed in these arbitration proceedings, assuming permission is granted by the Tribunal for such filing, such submissions to address only matters within the scope of the subject-matter of these arbitration proceedings; and
- (9) explain, insofar as not already answered, the reason(s) why the Tribunal should grant permission to the applicant to file its written submissions in these arbitration proceedings as an *amicus curiae*.¹⁸

22. The process to submit a non-disputing party's brief is divided into two stages by ICSID Arbitration Rule 37(2): an application to the tribunal for leave to file a brief under the conditions described above; and the actual submission, if the tribunal has granted the non-disputing party's application. In its decision on granting the requested leave to file, the tribunal is guided, among other things, by the criteria set forth in Rule 37(2). In some instances, the actual submission is attached to the application to file. This may be allowed under specific rules applicable to the particular case, such as respective rules on non-party submissions under NAFTA and CAFTA. A tribunal sometimes establishes requirements or guidelines for the non-disputing party's submission after agreeing to the application. Procedural safeguards are also put in place by tribunals when a non-disputing party is allowed to file a submission in order to preserve the integrity of the proceedings.¹⁹ Disputing parties

¹⁸ *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Procedural Order Regarding *Amici Curiae* (Feb. 2, 2011), available at <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement81>.

¹⁹ See e.g., *Piero Foresti, Laura de Carli and others v. Republic of South Africa*, ICSID Case No. ARB(AF)/07/1, Award (Aug. 4, 2010), para. 28 ("the Tribunal must ensure that [the non-disputing party (NDP) participation] is both effective and compatible with the rights of the

are usually allowed to provide observations on the non-disputing parties' applications and submissions.²⁰ The tribunal's powers to be the judge of the admissibility of any evidence adduced in the case and of its probative value under Arbitration Rule 34(1) extend to the non-disputing party's written submission. Therefore, it is within the tribunal's discretion to admit into evidence the non-disputing party's written submission once filed and whether to rely on it in its final determination of the case.

23. The right to submit *amicus* briefs does not grant any other procedural rights.²¹ Hence, there is no automatic access to documents,²² nor is there automatic access to hearings.²³ There has been a case where both disputing parties agreed that an *amicus* could attend part of the hearing and might be called on to clarify its submission at the hearing. So far, the practice has been that the disputing parties bear the costs related to the *amicus* submissions.

4. Hearings

4.1 Hearings open to the public

24. Before 2006, there were no clear provisions in the ICSID Rules allowing persons other than the counsel and the parties to attend hearings. The tribunal would decide with the consent of both parties who could attend other than the representatives and counsel for the parties.

Parties and the fairness and efficiency of the arbitral process."

²⁰ See e.g., *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 5 (Feb. 2, 2007), paras. 60-61. See also *Foresti Award*, *supra* note 19, para. 29 ("the Tribunal decided that, in view of the novelty of the NDP procedure, after all submissions, written and oral, had been made the Tribunal would invite the parties and the NDPs to offer brief comments on the fairness and effectiveness of the procedures adopted for NDP participation in this case. The Tribunal would then include a section in the award, recording views (both concordant and divergent) on the fairness and efficacy of NDP participation in this case and on any lessons learned from it.").

²¹ Or, in the words of the *Biwater* Tribunal, a "non-disputing' party does not become a party to the arbitration by virtue of a tribunal's decision under Rule 37, but is instead afforded a specific and defined opportunity to make a particular submission." *Biwater* Procedural Order No. 5, *supra* note 20, para. 46.

²² Contrast *Suez* Order 2007, *supra* note 13, para. 25 (in which no access to documents was granted *inter alia* because "the role of an *amicus curiae* is not to challenge arguments or evidence put forward by the Parties"), to *Foresti Award*, *supra* note 19, para. 28 (in which the Tribunal asked the parties to provide the *amici* with redacted versions of their pleadings "to focus their submissions upon the issues arising in the case and to see what positions the Parties have taken on those issues.").

²³ *Suez* Order 2005, *supra* note 12, paras. 4-7, and *Agua*s Order, *supra* note 14, paras. 5-8 (both denying access to the non-disputing party upon the objection of the Claimants). *Biwater* Procedural Order No. 5, *supra* note 20, para. 72 (access denied upon the objection of the Claimant but the Tribunal noted that it "reserves the right to ask the Petitioners specific questions in relation to their written submission, and to request the filing of further written submissions and/or documents or other evidence, which might assist in better understanding the Petitioners' position, whether before or after the hearing.").

25. In 2006, it was made clear in ICSID Arbitration Rule 32(2) that the tribunal may allow other persons to attend or observe hearings unless either party objects. If one party objects, the tribunal cannot proceed to allow those persons to attend.²⁴ An initial proposal made by the Centre aimed at giving some discretion to the tribunal, but this encountered strong opposition. ICSID Arbitration Rule 32(2) reads:

“Unless either party objects, the Tribunal, after consultation with the Secretary-General, may allow other persons, besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal, to attend or observe all or part of the hearings, subject to appropriate logistical arrangements. The Tribunal shall for such cases establish procedures for the protection of proprietary or privileged information.”

26. A similar provision was introduced under Article 39(2) of the ICSID Additional Facility Arbitration Rules.

27. NAFTA and Article 10.21.2 of CAFTA provide for hearings open to the public. Open hearings are subject to appropriate logistical arrangements to limit disruption and protect confidential information. In practice, some hearings, usually in the context of NAFTA or CAFTA cases, were broadcast in a separate room with a closed-circuit television feed²⁵ or were webcast.²⁶ Television feed and webcast are interrupted whenever confidential information is discussed.

4.2 Publication of transcript of hearings

28. The publication of transcripts of hearings follows the provisions applicable to case documents as described under item 2 above.

²⁴ See *supra* note 23 for an illustration.

²⁵ See e.g., *Methanex Corporation v. United States of America*, UNCITRAL (NAFTA).

²⁶ See e.g., the webcast available on the ICSID website of the hearing in *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Public Hearing (May 18, 2011), ICSID, <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement89>.

The webcast initiative is also part of the Centre's continuing effort to promote a broader understanding of investment dispute settlement under the ICSID Convention, Rules and Regulations, and to further the development of international investment law.

Annex 1: Procedural Details
Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12)

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Case Details

Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12)

Proceeding
Decisions & Awards
Procedural Details

Original Arbitration Proceeding

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|------------------------------|---|
| June 15, 2009 | The Acting Secretary-General registers a request for the institution of arbitration proceedings. |
| November 18, 2009 | The Tribunal is constituted. Its members are: V.V. Veeder (British), President; Brigitte Stern (French); Guido Santiago Tawil (Argentine). |
| January 04, 2010 | The Respondent files preliminary objections. |
| February 26, 2010 | The Claimant files a response on preliminary objections. |
| March 31, 2010 | The Respondent files a reply on preliminary objections. |
| May 13, 2010 | The Claimant files a rejoinder on preliminary objections. |
| May 31, 2010 - June 01, 2010 | The Tribunal holds a hearing on the Respondent's preliminary objections in Washington, D.C. |
| June 10, 2010 | The Tribunal issues a procedural order concerning <i>Amicus Curiae</i> submissions on preliminary objections. |
| August 02, 2010 | The Tribunal issues a decision on the Respondent's preliminary objections under CAFTA Articles 10.20.4 and 10.20.5. |
| September 27, 2010 | The Tribunal issues a procedural order concerning production of documents. |
| October 15, 2010 | The Respondent files a memorial on jurisdiction. |
| December 31, 2010 | The Claimant files a counter-memorial on jurisdiction. |
| January 26, 2011 | The Tribunal issues a procedural order concerning production of documents. |
| January 31, 2011 | The Respondent files a reply on jurisdiction. |
| February 02, 2011 | The Tribunal issues a procedural order concerning a non-disputing party submissions. |
| March 02, 2011 | A non-disputing party files an application pursuant to ICSID Arbitration Rule 37(2). The Claimant files a rejoinder on jurisdiction. |
| March 12, 2011 | The Tribunal issues a procedural order concerning production of documents. |
| March 23, 2011 | The Tribunal issues a procedural order concerning the admissibility of new evidence. The Tribunal issues a procedural order concerning production of documents. The Tribunal issues a procedural order concerning a non-disputing party submission. |

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| March 31, 2011 | The Tribunal issues a procedural order concerning production of documents. |
| May 02, 2011 - May 04, 2011 | The Tribunal holds a hearing on the Respondent's preliminary objections in Washington, D.C. |
| June 10, 2011 | The parties file post-hearing briefs and statement of costs. |
| June 24, 2011 | Each party files observations on the other party's statement of costs. |



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