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June 2, 2020

RE: PCA CASE N° 2018-56 – 1. ALBERTO CARRIZOSA GELZIS, 2. FELIPE CARRIZOSA GELZIS, 3. ENRIQUE CARRIZOSA GELZIS V. THE REPUBLIC OF COLOMBIA

Dear Mesdames,
Dear Sirs,

I write on behalf of the Tribunal, further to the Parties' and the United States' respective communications of Friday 22, 2020, concerning the publication of the Submission of the United States of America, dated May 1, 2020, and the Parties' Written Observations thereon, both dated May 15, 2020. These communications relate to the Claimants' request that a redaction be made to footnote 11 of the Submission of the United States of America ("**Footnote 11**"), which reads as follows:

With regard to the interpretations of the US-Colombia TPA and NAFTA offered by claimants in certain expert witness statements by Mr. Olin L. Wethington, the United States would note the following:

1. Only the government of the United States is authorized to offer interpretations of treaties on behalf of the United States. Mr. Wethington, as a former official, is not authorized to offer such interpretations.
2. Before offering any testimony as an expert witness regarding official subjects or based upon his official activities or official information to which he had access – which Mr. Wethington's witness statements expressly state that he has done here – U.S. law required Mr. Wethington to obtain the approval of the General Counsel of the U.S. Department of Treasury ("U.S. Treasury"). See 31 C.F.R. § 1.11(f). Mr. Wethington did not do so before providing his witness statements and the U.S. Treasury has sent Mr. Wethington a formal letter informing him that, among other things, his testimony was in violation of U.S. law.
3. The United States is not aware of any contemporaneous evidence that supports Mr. Wethington's view of the scope of investor-state dispute settlement in the financial services chapter of NAFTA.

At the Tribunal's invitation, the United States filed observations on the Claimants' requested redaction. The United States maintained that there was no basis to redact Footnote 11 under the United States-Colombia Trade Promotion Agreement or the UNCITRAL Transparency Rules. It also noted that "in the interest of transparency the United States' practice is to put its non-disputing Party submissions in investor-State arbitrations on the U.S. Department of State's web site, and it intends to do the same for the submission in this case as well."

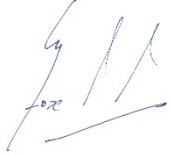
The Tribunal observes, with regret, that the United States' unilateral decision to publish an unredacted version of its Submission in any event would render any redactions that this Tribunal might deem proper nugatory. In the circumstances, the Tribunal is constrained to conclude that no purpose would be served by ordering any redactions to the Submission of the United States or to the Parties' Written Observations. The Tribunal directs that these materials be published in full on the PCA's website.

The Tribunal nonetheless expresses its unease that, in the context of a non-disputing party intervention, language which could potentially be construed as intimidatory of an expert witness upon the evidence of whom a Party wishes to rely would be published by a non-disputing party without regard to the Tribunal's view of the appropriateness of any such publication or the consequences that might flow from it, so far as the integrity of the arbitral process is concerned.

Lastly, in accordance with Article 3 of the UNCITRAL Transparency Rules, the PCA will publish this letter on its website on **Wednesday, June 10, 2020**, subject to any representations from the Parties pursuant to Article 7(3) of the UNCITRAL Transparency Rules.

Please do not hesitate to contact me at the contact details set forth above, or my colleague, Markel Eguiluz Parte, Assistant Legal Counsel (tel.: +31 70 302 4263; e-mail: meguiluzparte@pca-cpa.org) should you have any questions regarding this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'José Luis Aragón Cardiel', with a stylized flourish at the end.

José Luis Aragón Cardiel
Legal Counsel

cc: Mr. John Beechey CBE (*by e-mail: jb@beecheyarbitration.com*)
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