

PCA Case No. 2012-12

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF
AUSTRALIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,
SIGNED ON 15 SEPTEMBER 1993 (THE “TREATY”)**

-and-

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES OF
ARBITRATION AS REVISED IN 2010 (“UNCITRAL RULES”)**

-between-

PHILIP MORRIS ASIA LIMITED

(“Claimant”)

-and-

THE COMMONWEALTH OF AUSTRALIA

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

PROCEDURAL ORDER NO. 9

Regarding the Timetable for the First Phase of the Bifurcated Proceedings

16 May 2014

Arbitral Tribunal

Professor Karl-Heinz Böckstiegel (President)
Professor Gabrielle Kaufmann-Kohler
Professor Donald M. McRae

Registry

Permanent Court of Arbitration

WHEREAS, on 14 April 2014, the Tribunal issued Procedural Order No. 8 in the present arbitration, which addressed the manner in which the Respondent's preliminary objections would be heard, in a preliminary phase of the proceedings or joined to the merits;

WHEREAS, in Procedural Order No. 8, the Tribunal decided that the proceedings would be bifurcated, such that the first phase of the proceedings would deal only with the Respondent's "Non-Admission of Investment Objection" (First Objection) and "Temporal Objection" (Second Objection);

WHEREAS the Tribunal invited the Parties to consult with each other in respect of a timetable for this phase of the proceedings ("Timetable") on the basis of a model annexed to Procedural Order No. 8;

WHEREAS, on 11 May 2014, the Parties proposed an agreed Timetable for the Tribunal's consideration and approval;

HAVING REGARD TO THE PARTIES' JOINT PROPOSAL, THE TRIBUNAL NOW SETS THE FOLLOWING TIMETABLE:

1. On 7 July 2014 the Claimant shall file its Counter-Memorial on Preliminary Objections with any further evidence (documents, witness statements, expert reports) but only in rebuttal of the preliminary objections that the Respondent set forth in its Statement of Defence and that the Tribunal deemed suitable for resolution in a first phase of the bifurcated proceedings.
2. By 28 July 2014 either Party may submit to the other Party (but not to the Tribunal) a reasoned application (Request to Produce) for the production of documents sought from the other Party, limited to material relevant to the First and Second Objections as set forth by Respondent in its Statement of Defence.
3. By 18 August 2014 each Party shall either disclose the requested documents or provide the other Party with reasoned objections to their production.
4. By 8 September 2014 the Parties may submit to the Tribunal, either jointly or separately, in the form of a Redfern Schedule, summaries of the Requests to Produce on which they cannot agree.
5. By 29 September 2014 the Tribunal shall decide on such applications and the Parties shall produce the requested documents to which they have raised no objection.

6. By 20 October 2014 the Parties shall produce documents as ordered by the Tribunal.
7. On 1 December 2014 the Respondent shall file its Reply on Preliminary Objections together with any further evidence (documents, witness statements, expert reports) upon which it wishes to rely, provided such arguments and evidence do not exceed the scope of the preliminary objections that the Respondent set forth in its Statement of Defence and that the Tribunal deemed suitable for resolution in the bifurcated proceedings.
8. On 12 January 2015 the Claimant shall file its Rejoinder on Preliminary Objections together with any further evidence (documents, witness statements, expert reports) upon which it wishes to rely, but only in rebuttal of the Respondent's Reply on Preliminary Objections.
9. At this stage, the Tribunal may send to the Parties a preliminary draft of the Procedural Order regarding details of the hearing and invite them for comments within a week.
10. By 26 January 2015 the Parties shall submit notifications of the witnesses and experts, presented by themselves or by the other Party, whom they wish to examine at the Hearing on Preliminary Objections, and a chronological list of all exhibits with indications where the respective documents can be found in the file.
11. By 2 February 2015, the Parties may submit any changes to their above notifications of witnesses and experts that they may wish to make after having seen the notification of the other side.
12. On 9 February 2015 a Pre-Hearing Conference between the Parties and the Tribunal may be held if considered necessary by the Tribunal, either in person or by telephone, at a time set by the Tribunal after consultation with the Parties.
13. As soon as possible, the Tribunal shall issue a Procedural Order regarding details of the Hearing on Preliminary Objections.
14. The Hearing on Preliminary Objections shall be held in Singapore starting on 16 February 2015 for three business days (and two additional days in reserve) or until the Tribunal determines it should conclude.
15. At the end of the Hearing on Preliminary Objections, the Tribunal will consult with the Parties as to whether the Parties shall submit post-hearing briefs and claims for arbitration costs, and by which dates.

16. The Tribunal points out that, particularly in early 2015 immediately before the Hearing, the schedule is very tight. Therefore, the Parties should be aware that there will be no option to allow any extensions during that period.

Dated: 16 May 2014



On behalf of the Tribunal

**Professor Karl-Heinz Böckstiegel
President of the Tribunal**