

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”)**

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**PROCEDURAL ORDER NO. 13**  
**Regarding Disclosure of Certain Sensitive Documents**

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**9 December 2014**

**Arbitral Tribunal**

Professor Karl-Heinz Böckstiegel (President)

Professor Gabrielle Kaufmann-Kohler

Professor Donald M. McRae

**Registry**

Permanent Court of Arbitration

**WHEREAS**, by letter dated 5 December 2014, the Claimant brought to the attention of the Tribunal that the Respondent produced eighteen documents regarding the *travaux* of the Treaty in redacted form and withheld one document entirely, as the Claimant argues in contravention of Procedural Order No. 12; and whereas the Respondent offered to allow one lawyer from Sidley Austin to review the documents at the Australian Embassy in Washington, D.C., under certain conditions;

**WHEREAS**, by letter dated 6 December 2014, the Respondent confirmed that it wished to reply to the Claimant's letter dated 5 December 2014 as soon as it was able to engage with the Government of Hong Kong;

**WHEREAS**, by letter dated 6 December 2014, the Claimant requested that the Tribunal deny the Respondent's request for leave to file a response to the Claimant's letter of 5 December 2014 and that the Tribunal order the Respondent immediately to produce full versions of the listed documents as required by Procedural Order No. 12;

**WHEREAS**, by letter dated 7 December 2014, the Respondent stressed that the Tribunal should not issue an Order without hearing the Respondent; and whereas the Respondent proposed a timetable for submissions by the Parties in this regard;

**WHEREAS**, by letter dated 7 December 2014, the Claimant reiterated its request that the Tribunal deny the Respondent's request for additional submissions and order the Respondent to comply with Procedural Order No. 12;

**WHEREAS**, by letter dated 8 December 2014, the Respondent filed an affidavit of a Deputy Secretary at the Department of Foreign Affairs and Trade ("DFAT") to assist the Tribunal in its consideration of the sensitivity of the redacted information at issue;

**WHEREAS**, by letter dated 8 December 2014, the Claimant objected to the admissibility of the affidavit of a senior DFAT official and reiterated its request to order the Respondent to comply with Procedural Order No. 12;

**WHEREAS**, by letter dated 9 December 2014, the Respondent proposed alternative terms of access to the documents in question; and whereas, pursuant to these alternative terms, two lawyers would be admitted to review the documents and would be entitled to take one confidential copy;

**WHEREAS**, in view of the urgency of the matter and in the interest of avoiding to the extent possible delays for the Claimant's preparation of its next submission, the Tribunal refrains from restating the information provided and from reiterating the arguments exchanged by the Parties, as these are well known to the Parties and the Tribunal;

**WHEREAS**, the Tribunal has carefully examined this information and these arguments, but only includes in this Procedural Order its decisions;

**NOW, THEREFORE, THE TRIBUNAL DECIDES:**

1. The Respondent shall grant access to the documents in question in unredacted form, at the Australian Embassy in Washington, to two nominated lawyers from Sidley Austin. Such access shall be granted on Tuesday, 9 December 2014 (Eastern time) or a later day as agreed by the Parties. The Claimant is requested to communicate the names of the nominated lawyers in advance to the Respondent so that appropriate arrangements can be made.

2. The nominated lawyers shall be permitted to take one copy of any of the documents.
3. Any such copy must be kept in a secure safe with access restricted to the nominated lawyers.
4. The nominated lawyers undertake to destroy any such copy upon the Claimant agreeing to the Respondent's claimed redactions or the Tribunal upholding the Respondent's requested redactions, whichever occurs earlier.
5. The nominated lawyers shall not disclose the copies of documents or any information derived from the documents (or copies of the documents) to any other person, including the Claimant. The documents thus disclosed are to be treated as "Confidential Information" for the purposes of Procedural Order No. 5.
6. Within two days after the visit under Section 1, the Claimant shall notify the Tribunal and the Respondent which of the redacted parts of documents it claims are relevant to the proceedings, and why.
7. Within two days after the notification under Section 6, the Respondent shall submit to the Tribunal and the Claimant a response to that notification, together with any evidence that the Respondent wishes to adduce, including any evidence from Hong Kong.
8. Within two days after the response under Section 7, the Claimant shall provide to the Tribunal and the Respondent any comments on the Respondent's submission.
9. Insofar as no agreement is reached between the Parties, the Tribunal intends to render a decision as soon as possible.

**Dated: 9 December 2014**



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**On behalf of the Tribunal**

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