

**PCA Case No. 2016-17**

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN REPUBLIC-  
CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT,  
SIGNED ON AUGUST 5, 2004 (“CAFTA-DR”)**

**- and -**

**THE UNCITRAL ARBITRATION RULES (AS ADOPTED IN 2013)  
(the “UNCITRAL Rules”)**

**-between-**

**MICHAEL BALLANTINE AND LISA BALLANTINE (UNITED STATES OF AMERICA)  
(the “Claimants”)**

**-and-**

**THE DOMINICAN REPUBLIC  
(the “Respondent”, and together with the Claimants, the “Parties”)**

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**PROCEDURAL ORDER NO. 1**

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*Tribunal*

Prof. Ricardo Ramírez Hernández (Presiding Arbitrator)  
Ms. Marney Cheek  
Prof. Raúl Emilio Vinuesa

**October 21, 2016**

**1. Continuation in Force of Prior Orders**

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force until the end of the arbitration unless expressly amended or terminated.

**2. Place of arbitration**

- 2.1 By agreement of the Parties, and pursuant to CAFTA-DR Article 10.20.1, the place of arbitration is fixed at Washington, D.C., U.S.A.
- 2.2 Hearings shall be held in Washington, D.C., U.S.A.
- 2.3 The Tribunal may meet at any location it considers appropriate for deliberations.

**3. Language**

- 3.1 The languages of the arbitration shall be English and Spanish.
- 3.2 The Tribunal's awards, decisions and procedural orders shall be issued simultaneously in English and Spanish. Both versions shall be equally authentic. In case of differences of interpretation, the English text shall prevail.
- 3.3 Pleadings may be submitted in English or Spanish, provided that their submission is followed by a translation into the other procedural language within 15 calendar days. Expert opinions, witness statements, and exhibits may be submitted in English or Spanish, provided that their submission is followed by a translation into the other procedural language within 30 calendar days. Although pleadings, expert opinions, and witness statements must be translated in full, if an exhibit is lengthy and relevant only in part, it shall be sufficient to translate only the relevant parts (provided that the Tribunal may order the submission of more fulsome — or complete — translations on its own initiative or upon a reasoned request by the opposing Party). English- and Spanish-language legal authorities may be submitted in their original language, without translation (again provided that the Tribunal may order the submission of translations on its own initiative or upon a reasoned request by the opposing Party). Each Party shall bear the costs of translating its respective written submissions.
- 3.4 Informal translations will be accepted as accurate unless contested by the other Party, in which case, the Parties shall attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Tribunal shall take the corresponding decision, for which it may appoint a certified translator to have the document(s) in question translated. In the case of a contested translation, the Tribunal shall decide which Party shall bear the cost of additional translation.
- 3.5 Communications addressed to or sent by the PCA may be in either procedural language. Written requests or applications by one of the Parties (and the opposing Party's response thereto) may be submitted in English or Spanish, provided that a translation of any such application or request into the other procedural language is filed within three business days. If the request or application requires urgent action by the Tribunal, the request/application (and the opposing Party's response thereto) shall be submitted in English (without prejudice to the possible simultaneous submission of a version in Spanish).

- 3.6 Oral argument before the Tribunal shall be given in English or Spanish. Simultaneous interpretation into the other procedural language shall be provided. Witnesses and experts may testify orally in a language of their choosing, with simultaneous translation (as needed) into both procedural languages. Both Parties shall equally share oral interpretation costs.
- 3.7 Documents produced in response to requests or orders for production may be produced in their original language.
- 3.8 The Tribunal reserves the right to require a Party to translate any document in whole or in part.

#### **4. Procedural Calendar**

- 4.1 The procedural calendar is enclosed as **Annex 1** to this order.
- 4.2 On the date of the deadline for any written submission, the Party in question shall send the submission, together with any witness statements and expert reports or opinions (but excluding other supporting documents and legal authorities), to the Tribunal, PCA, and opposing counsel, by e-mail, in accordance with section 10 of the Terms of Appointment.
- 4.3 To facilitate filing, citations, and word processing, all written submissions, including witness statements and expert reports or opinions, shall be provided as fully text-searchable Adobe Portable Document Format (“**PDF**”) files, and preceded by a hyper-linked table of contents.
- 4.4 Three business days following the submission of a written submission and accompanying documents by e-mail, the Party in question shall send hard copies of the written submission and all accompanying documents (except for legal authorities), to the Tribunal, PCA, and opposing counsel, by courier,<sup>1</sup> printed double-sided in A4 or letter-size paper, unbound in self-standing ring binders, organized in chronological or other appropriate order, with a separate tab for each exhibit, and preceded by a list describing each document by exhibit number, date, name, author, and recipient (as applicable). Documents (including exhibits and legal authorities) shall also be submitted in electronic form on a USB flash memory drive, preferably as searchable PDF files.
- 4.5 For any simultaneous submissions, each side shall submit all electronic and hard copies only to the PCA. The PCA will acknowledge — and inform the Tribunal and opposing Party — of receipt, but will wait to distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 4.6 Unless otherwise provided, all time limits shall refer to midnight at the place of arbitration on the day of the deadline.
- 4.7 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons, provided that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline, and that absent extenuating circumstances, such extensions do not affect the dates fixed for any hearing or other meeting.

#### **5. Document Production**

- 5.1 Each Party may request the production of documents from the other Party in accordance with the procedural calendar set out in **Annex 1**. Requests for the production of documents shall be in

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<sup>1</sup> The Parties may use FedEx, DHL, etc. for deliveries to addresses outside the United States of America.

- writing (following the format in the exemplar contained in **Annex 2**) and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, or has a reasonable basis for requesting an extension, it shall produce the requested documents within the applicable time limit.
- 5.2 Any documents produced in response to the opposing Party's request or Tribunal's order shall be "Bates numbered" and transmitted to the requesting Party in electronic/text-searchable form, accompanied by an index that indicates which documents have been produced in response to which requests.
- 5.3 If the requested Party objects to production, the following procedure shall apply:
- 5.3.1 The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
- 5.3.2 The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
- 5.3.3 The Parties shall seek agreement on production requests to the greatest extent possible.
- 5.3.4 To the extent that agreement cannot be reached between the Parties, the Parties shall submit all outstanding requests to the Tribunal for decision.
- 5.3.5 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex 2** (a modified Redfern schedule). The Parties shall use the model format throughout their exchange of requests, objections, and responses.
- 5.3.6 The Tribunal shall rule on any such application and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar, unless, upon a reasoned request, and after receiving the opposing party's comments on such request, the Tribunal grants an extension.
- 5.4 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.
- 5.5 The Parties shall not copy the Tribunal or the PCA on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the Parties in response to document production requests shall only form part of the evidentiary record if a Party subsequently submits them as an annex to its written submissions (*i.e.*, as an exhibit) or upon authorization of the Tribunal after the exchange of submissions.
- 5.6 The failure of a Party to produce documents as ordered by the Tribunal may lead the Tribunal to draw the negative inferences it deems appropriate in relation to the documents not produced.

## **6. Evidence and Legal Authorities**

- 6.1 In addition to the relevant articles of the UNCITRAL Rules and the provisions on document production above, the Tribunal may use, as an additional guideline, the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, when considering matters of evidence.
- 6.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, exhibits, legal authorities, and all other evidence and authority in whatever form.
- 6.3 In the Reply and Rejoinder, such evidence shall only be submitted in support of the factual or legal arguments advanced in rebuttal to the other side's prior written submission or in relation to new evidence arising from document production.
- 6.4 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave, after consultation between the Parties, on the basis of a reasoned request justifying why such documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.
- 6.5 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimants shall begin with the designation "Ex. C" followed by the applicable number (*i.e.*, Ex. C-1, Ex. C-2, etc.); each exhibit submitted by the Respondent shall begin with the designation "Ex. R" followed by the applicable number (*i.e.*, R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.6 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimants shall begin with the letters "CLA" followed by the applicable number (*i.e.*, CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (*i.e.*, RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.7 All documentary evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
- 6.8 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (*i.e.*, in Excel format rather than PDF).
- 6.9 Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal in hard copy.

## **7. Witnesses**

- 7.1 Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 7.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Such written statement shall constitute the direct testimony of the witness. Where in exceptional

circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal, following due consideration of both Parties' positions on the issue, and in accordance with its directions.

- 7.3 Each witness statement shall contain at least the following:
- (a) the name, date of birth, and present address of the witness;
  - (b) a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
  - (c) a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
  - (d) a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
  - (e) the signature of the witness.
- 7.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been submitted with the written submissions. If a Party wishes to present for examination at the hearing any of its own witnesses or experts who have not been called by the Tribunal or the other Party, it shall request leave of the Tribunal. The Tribunal shall afford both Parties an opportunity to be heard on whether the witness may be examined at the hearing (and, if so, the rules governing such examination).
- 7.5 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 7.6 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's or expert's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material. Upon written application by a Party to the Tribunal presenting exceptional circumstances that prevent the in-person appearance of a witness at hearing, and an opportunity for the other Party to be heard, the Tribunal may allow the appearance of a witness at hearing by videoconference.
- 7.7 Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide, if so requested, upon the appropriate allocation of such costs in its final award.
- 7.8 At any hearing, the examination of each witness shall proceed as follows:
- (a) the witness shall make a declaration of truthfulness;
  - (b) although direct examination will have been given in the form of a written statement, the Party presenting the witness may conduct a brief direct examination;

- (c) the adverse Party may then cross-examine the witness on relevant matters that: (i) were addressed or presented in the witness statement, (ii) were not addressed or presented in the witness statement but are or should be within the scope of the witness's knowledge, or (iii) go to the witness's credibility;
- (d) the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
- (e) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.

7.9 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness.

7.10 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

7.11 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination.

## **8. Experts**

8.1 Each Party may retain experts and submit their evidence to the Tribunal.

8.2 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit or authority will be enough.

8.3 The provisions set out in relation to witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, (i) experts will make a declaration that corresponds to their role as experts rather than witnesses of fact, and (ii) unless the Parties agree otherwise, experts may be present in the hearing room at any time.

8.4 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

## **9. Hearings**

9.1 After consultation with the Parties, for each hearing, the Tribunal shall issue a procedural order convening the meeting and establishing its place, time, agenda, and all other technical and ancillary aspects.

9.2 The PCA shall use its best efforts to obtain appropriate hearing and meeting room facilities in Washington, D.C. at a low cost or no cost to the Parties, pursuant to its cooperation and host country agreements with its Member States and other institutions. Without prejudice to the Tribunal's final decision on the proper apportionment of administrative costs, the costs of catering, court reporting, or other technical support associated with hearings or meetings shall be borne in equal parts by the Parties.

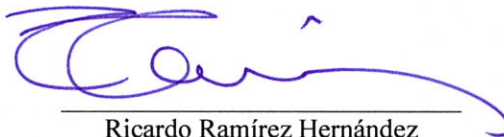
9.3 Hearings shall be audio recorded and the recording shall be made available to the Parties.

- 9.4 The PCA, upon consultation with the Parties, shall arrange transcription using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.
- 9.5 Where necessary, the PCA shall arrange for simultaneous interpretation of oral argument or testimony.
- 9.6 No new evidence may be presented at the hearing except with leave of the Tribunal (following a request by the Party seeking to introduce new evidence, and an opportunity for the opposing Party to be heard on the request). PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party during the hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly. Should the Tribunal grant leave to a Party to present new evidence in the course of the hearing, it should grant the other Party the opportunity to introduce new evidence to rebut it.

**10. Transparency**

- 10.1 The arbitration shall be conducted in accordance with the procedure set forth in Article 10.21 of the CAFTA-DR. The PCA shall make available to the public, on its website, the information and documents listed in Article 10.21(1) of the CAFTA-DR, unless the Tribunal decides otherwise in accordance with the provisions of that Article.
- 10.2 Pursuant to Article 10.21(2) of the CAFTA-DR, hearings shall be conducted open to the public and the PCA shall determine, in consultation with the Parties and the Tribunal, the appropriate logistical arrangements. If any of the Parties intends to use information designated as protected information in a hearing, it shall so advise the Tribunal, who shall make appropriate arrangements to protect the information from disclosure.

**Place of Arbitration: Washington D.C., United States of America**



Ricardo Ramírez Hernández  
(Presiding Arbitrator)

On behalf of the Tribunal



### **Annex 1: Procedural Calendar**

Without prejudice to the Respondent's right to seek, and the Tribunal's authority to order, resolution of an objection as a preliminary question, the procedural calendar shall be as follows, taking into account that Article 10.16(4)(c) of the CAFTA-DR provides for the submission of the Notice of Arbitration together with the Statement of Claim. The Tribunal notes that the Claimants' submission dated 11 September 2014 includes both.

<b><u>Event</u></b>	<b><u>Date</u></b>
<b><i>Initial Phase</i></b>	
First Procedural Meeting	WEDNESDAY, SEPTEMBER 28, 2016 <sup>2</sup>
Claimants' Amended Statement of Claim <sup>3</sup>	WEDNESDAY, JANUARY 4, 2017 ( <i>i.e.</i> , three months and one week from First Procedural Meeting)
Respondent's Statement of Defense/Counter-Memorial, including any objection to the Tribunal's jurisdiction and/or counterclaim	THURSDAY, MAY 4, 2017 ( <i>i.e.</i> , four months from deadline for Amended Statement of Claim)
Written submissions from "non-disputing Parties" and notification of their wish to present oral submissions to the Tribunal, both regarding the interpretation of the CAFTA-DR, pursuant to Article 10.20(2) of the Treaty. Any submission or notification made pursuant to said Article shall be made in conformity with section 10 of the Terms of Appointment.	MONDAY, JUNE 5, 2017 <sup>4</sup> ( <i>i.e.</i> , one month from deadline for Statement of Defense)
<b><i>Document Production</i></b>	
Requests for document production to the other Party	THURSDAY, MAY 18, 2017 ( <i>i.e.</i> , two weeks from deadline for Statement of Defense)
Objections to production	THURSDAY, JUNE 1, 2017 ( <i>i.e.</i> , two weeks from deadline for requests for document production)

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<sup>2</sup> Claimants accepted to have a 3 month 1 week deadline for their Amended Statement of Claim, while Respondent would have a 4 month deadline for its Statement of Defense.

<sup>3</sup> Although the Dominican Republic does not object in principle to Claimants' wish to submit an Amended Statement of Claim, this should not be construed as a blanket waiver of the Dominican Republic's right to mount any objection under Article 22 of the UNCITRAL Rules.

<sup>4</sup> The precise 1 month after the Respondent's Statement of Defense would be Sunday, June 5, 2017. The deadline has one day added in order for it to be in a business day.

Production of documents where no objection is made	THURSDAY, JUNE 8, 2017 ( <i>i.e.</i> , three weeks from deadline for requests for document production)
Replies to objections to production	THURSDAY, JUNE, 8 2017 ( <i>i.e.</i> , one week from deadline for objections to production)
Reasoned applications for an order on production of documents, in the form of a Redfern Schedule (Annex 2)	MONDAY, JUNE 12, 2017 ( <i>i.e.</i> , 1.5 week from deadline for objections to production)
Tribunal's decision on document production	MONDAY, JUNE 26, 2017 ( <i>i.e.</i> , two weeks from deadline for application)
Production of remaining documents	MONDAY, JULY 10, 2017 ( <i>i.e.</i> , two weeks from Tribunal decision)
<b><i>Written Pleadings</i></b>	
Claimants' Reply	MONDAY, SEPTEMBER 11, 2017 ( <i>i.e.</i> , two months from production of remaining documents)
Respondent's Rejoinder	MONDAY, DECEMBER 11, 2017 ( <i>i.e.</i> , three months from deadline for Claimant's Reply)
Claimants' Rejoinder on Jurisdiction ( <i>if any</i> )	DATE TO BE DETERMINED BY THE TRIBUNAL AT A LATER STAGE
<b><i>Oral Pleadings</i></b> <sup>5</sup>	
Witness Notifications	APPROXIMATELY ONE MONTH BEFORE THE HEARING
Pre-hearing Conference	APPROXIMATELY ONE MONTH BEFORE THE HEARING

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<sup>5</sup> Pending upon Tribunal's decision on written pleadings.

Oral Hearing

AT LEAST TWO MONTHS  
FOLLOWING THE DEADLINE  
FOR THE RESPONDENT'S  
REJOINDER

