

PCA Case No. 2018-56

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – COLOMBIA  
TRADE PROMOTION AGREEMENT, SIGNED ON 22 NOVEMBER 2006 AND ENTERED  
INTO FORCE ON 15 MAY 2012**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (the “UNCITRAL Rules”)**

- between -

- 1. ALBERTO CARRIZOSA GELZIS**
- 2. FELIPE CARRIZOSA GELZIS**
- 3. ENRIQUE CARRIZOSA GELZIS**

**(the “Claimants”)**

- and -

**THE REPUBLIC OF COLOMBIA**

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

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**PROCEDURAL ORDER NO. 4**

**Claimants’ Application of 17 November 2020**

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*Tribunal*

Mr. John Beechey CBE (Presiding Arbitrator)  
Prof. Franco Ferrari  
Mr. Christer Söderlund

*Assistant to the Tribunal*

Mr. Niccolò Landi

*Registry*

Permanent Court of Arbitration

**26 November 2020**

**UPON READING**

- (i) Claimants' letter of 17 November 2020;
- (ii) Respondent's letter of 20 November 2020;

**NOTING**

- (iii) that Claimants seek leave to introduce into the record in this arbitration the hearing transcripts and video recordings of the evidence of the Parties' respective legal experts, Dr Jorge Enrique Ibáñez Najar ("**Dr Ibáñez**") and Dr Martha Teresa Briceño ("**Dr Briceño**"), in ICSID Case No. ARB/18/05 between Mrs Astrida Benita Carrizosa and the Republic of Colombia ("**the ICSID proceedings**");
- (iv) Claimants' submissions that:
  - (a) access to the record of Dr Ibáñez's and Dr Briceño's expert testimony in the ICSID proceedings would both afford this Tribunal an opportunity "to discuss the two expert testimonies to the fullest" and allow an evidentiary gap to be cured;
  - (b) the reports filed in the ICSID proceedings by Drs. Briceño and Ibáñez are identical to their reports in this arbitration and they address the same facts and legal issues; and
  - (c) there is a substantial identity of claims between the two arbitrations and all the counsel are the same;
- (v) Respondent's submissions that:
  - (a) it agrees that this Tribunal might find the transcripts and recordings of the legal experts' oral evidence in the ICSID proceedings "helpful"; but
  - (b) the Tribunal should not be left with "excerpts". It should be afforded access to the entirety of the record of the hearing in order to ensure that the experts' oral evidence is seen in context – "including the Parties' observations and comments at the hearing on that testimony"; and
  - (c) the admission of the full hearing record in the ICSID proceedings would cause neither harm nor prejudice to Claimants;

**NOTING FURTHER**

- (vi) that the principle of admitting these materials is not in issue between the Parties – indeed, Respondent seeks to condition its consent to Claimants' application upon the admission of the entire hearing transcript and video recording of the ICSID proceedings into the record in this arbitration;


**CONSIDERING**

- (vii) that the Tribunal is not persuaded by Respondent’s attempt to justify the importation of the entire record of the hearing in the ICSID proceedings into the record in this arbitration on the basis that the evidence of the Parties’ respective legal experts requires “context”. The Tribunal is not invited to rely on “excerpts” extracted in an arbitrary manner from the record in the ICSID proceedings. If it were admitted, a full record of the legal experts’ oral evidence in the ICSID proceedings would constitute a substantial body of material that had sufficient “context”;
- (viii) that, in any event, by its decision of 23 September 2020, the Tribunal had admitted into the record in the jurisdictional phase in this arbitration the reports of Dr Ibáñez and Dr Briceño. To the extent that this evidence is relevant for present purposes, the Tribunal does not accept the proposition that it would need to discuss it to “the fullest”, such that it should permit so extraordinary an addition to the record in this arbitration as the entire hearing record in the ICSID proceedings in order to enable it to do so;
- (ix) that the Tribunal has been informed that the content of the reports filed in this arbitration by Dr Ibáñez and Dr Briceño is in all material respects the same as that of the reports filed by them in the ICSID proceedings; and
- (x) that counsel who appear in this arbitration appeared in the ICSID arbitration proceedings.

**AND HAVING DELIBERATED**, the Tribunal **HEREBY DETERMINES** that:

1. It is unnecessary to depart from or otherwise vary its decision of 23 September 2020, by which the expert’s reports of Dr Briceño and Dr Ibáñez, made in respect of the claims in this arbitration, were admitted into the record for the forthcoming jurisdictional hearing.
2. Claimants’ application for leave to file the hearing transcripts and video recordings of the examinations of Dr Ibáñez and Dr Briceño in the ICSID proceedings is denied.

**Place of Arbitration: London, United Kingdom**



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Mr. John Beechey CBE  
(Presiding Arbitrator)

On behalf of the Tribunal