

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA, DATED 30 JUNE 2007**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW, 2013**

PCA CASE NO. 2018-51

-between-

**ELLIOTT ASSOCIATES, L.P. (U.S.A.)
(the “Claimant”)**

-and-

**REPUBLIC OF KOREA
(the “Respondent,” and together with the Claimant, the “Parties”)**

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas QC

Registry

Permanent Court of Arbitration

14 May 2019

WHEREAS on 22 March 2019, a First Procedural Meeting was held by video-conference, in which all members of the Tribunal, counsel and representatives for both Parties and the PCA participated;

WHEREAS on 1 April 2019, the Tribunal, having consulted the Parties, issued Procedural Order No. 1, which recorded the agreement of the Parties on procedural matters, and where no agreement was reached, set forth the Tribunal's directions;

WHEREAS on the same date, the Tribunal invited the Parties to consult with each other in respect of the procedural calendar, taking into account the Tribunal's directions regarding the sequence of submissions and the time limits to apply in the document production phase;

WHEREAS on 15 April 2019, the Parties jointly submitted to the Tribunal a draft procedural calendar indicating the aspects of the calendar on which the Parties were able to agree as well as the remaining points on which the Parties were unable to agree; and whereas on the same date, each Party set out its positions in respect of the remaining points of disagreement;

WHEREAS on 25 April 2019, the Tribunal invited the Parties to consult with each other in respect of the dates to be reserved for a hearing for each Track of the procedural calendar; and whereas on 10 May 2019, the Parties reverted to the Tribunal with an indication of their availability on the dates proposed by the Tribunal and provided further comments;

WHEREAS this Procedural Order records the agreement of the Parties on the procedural calendar, and where no agreement has been reached, sets forth the Tribunal's directions in light of the Parties' views set out in their correspondence of 15 April 2019 and 10 May 2019;

THE TRIBUNAL HEREBY ORDERS:

1. Procedural Calendar in the Event that Bifurcation Is Not Requested

1.1 In the event that the Respondent in its Statement of Defence does not request bifurcation (because it does not raise preliminary objections at all or, even if it raises such objections, does not request bifurcation), the arbitration shall proceed in accordance with the following schedule (**Track A1**):

<i>Phase 1: First-Round Written Submissions</i>		
Amended Statement of Claim	Claimant	4 April 2019
Statement of Defence (and any preliminary objections)	Respondent	30 August 2019
<i>Phase 2: Document Production and Non-disputing Party Submission</i>		
Document production requests	Parties	4 October 2019
Objections to production	Parties	25 October 2019
Responses to objections (submitted to Tribunal)	Parties	15 November 2019
Voluntary production	Parties	29 November 2019

Notice by non-disputing Party that it intends to file a submission in accordance with Article 11.20(4) of the Treaty	United States	29 November 2019
Tribunal decision on objections	Tribunal	13 December 2019
Involuntary production and completion of voluntary production	Parties	10 January 2020
Non-disputing party submission in accordance with Article 11.20(4) of the Treaty	United States	10 January 2020
<i>Phase 3: Second-Round Written Submissions</i>		
Statement of Reply (and Defence to Preliminary Objections, if any)	Claimant	10 April 2020
Statement of Rejoinder (and Reply to Preliminary Objections, if any)	Respondent	10 July 2020
(Claimant's Rejoinder on Preliminary Objections, if any)	(Claimant)	(31 August 2020)
<i>Phase 4: Hearing</i>		
Notification of witnesses and experts to be cross-examined	Parties	5 October 2020
Pre-Hearing Conference	All	19 October 2020
Hearing	All	The weeks of 25 January and 1 February 2021

2. Procedural Calendar in the Event that the Respondent Raises a Preliminary Objection on the Basis of Article 11.20(6)(a) Only

2.1 In the event that the Respondent in its Statement of Defence raises a preliminary objection on the basis of Article 11.20(6)(a) of the Treaty (but not on any other basis), the proceedings shall be bifurcated in accordance with Article 11.20(6)(b) of the Treaty. In such a case, the arbitration shall proceed in accordance with the following schedule (**Track B1**):

<i>Phase 1: First-Round Written Submissions</i>		
Amended Statement of Claim	Claimant	4 April 2019
Statement of Defence and Preliminary Objections on the basis of Article 11.20(6)(a) of the Treaty	Respondent	30 August 2019

<i>Phase 2: Written Submissions on Preliminary Objections under Article 11.20(6)(a) of the Treaty</i>		
Counter-Memorial on Preliminary Objections	Claimant	11 October 2019
Reply on Preliminary Objections	Respondent	8 November 2019
Rejoinder on Preliminary Objections	Claimant	6 December 2019
Notice by non-disputing Party that it intends to file a submission in accordance with Article 11.20(4) of the Treaty	United States	20 December 2019
Non-disputing party submission in accordance with Article 11.20(4) of the Treaty	United States	17 January 2020
Parties' observations on non-disputing Party submission	Parties	31 January 2020
<i>Phase 3: Hearing on Preliminary Objections under Article 11.20(6)(a) of the Treaty</i>		
Pre-Hearing Conference	All	4 weeks before the hearing
Submission of Agreed Bundle of Documents for the Hearing	Parties	2 weeks before the hearing
Hearing	All	The week of 27 April 2020
<i>Phase 4: Written submissions on the merits as well as on any preliminary objections pursuant to Article 23(2) of the UNCITRAL Rules not possessing a preliminary character, document production</i>		
To be determined in consultation with the Parties, if applicable		
<i>Phase 5: Hearing on the merits as well as on any preliminary objections pursuant to Article 23(2) of the UNCITRAL Rules not possessing a preliminary character</i>		
To be determined in consultation with the Parties, if applicable		

3. **Procedural Calendar in the Event that the Respondent Raises a Preliminary Objection (i) on the Basis of Article 11.20(6)(a) as Well as on a Basis Other than Article 11.20(6)(a), or (ii) on a Basis Other than Article 11.20(6)(a) (But Not on the Basis of Article 11.20(6)(a))**
- 3.1 In the event that the Respondent in its Statement of Defence raises a preliminary objection on the basis of Article 11.20(6)(a) of the Treaty as well as on a basis other than Article 11.20(6)(a) of the Treaty, or solely on a basis other than Article 11.20(6)(a) of the Treaty, the arbitration shall proceed in accordance with the with the following schedule (**Track B2**):

<i>Phase 1: First-Round Written Submissions</i>		
Amended Statement of Claim	Claimant	4 April 2019
Statement of Defence and Preliminary Objections on the basis of Article 11.20(6)(a) of the Treaty and on a basis other than Article 11.20(6)(a) of the Treaty, or solely on a basis other than Article 11.20(6)(a) of the Treaty, together with a request for bifurcation	Respondent	30 August 2019
Observations on the Respondent's request for bifurcation	Claimant	20 September 2019
Target date for the Tribunal to decide on bifurcation (on a basis other than Article 11.20(6)(a) of the Treaty) – the proceedings shall be bifurcated in any event to deal with the Respondent's preliminary objections under Article 11.20(6)(a) of the Treaty	Tribunal	4 October 2019 for decision without reasons, followed on 18 October 2019 by reasoned decision
<i>Phase 2: Written Submissions on Bifurcated Preliminary Objections</i>		
Memorial on Preliminary Objections	Respondent	1 November 2019
Counter-Memorial on Preliminary Objections	Claimant	10 January 2020
Reply on Preliminary Objections	Respondent	7 February 2020
Rejoinder on Preliminary Objections	Claimant	6 March 2020
Notice by non-disputing Party that it intends to file a submission in accordance with Article 11.20(4) of the Treaty	United States	20 March 2020
Non-disputing party submission in accordance with Article 11.20(4) of the Treaty	United States	3 April 2020
Parties' observations on non-disputing Party submission	Parties	17 April 2020
<i>Phase 3: Hearing on Bifurcated Preliminary Objections</i>		
Pre-Hearing Conference	All	4 weeks before the hearing
Submission of Agreed Bundle of Documents for the Hearing	Parties	2 weeks before the hearing
Hearing	All	To be determined at a later stage, should this Track become applicable

<i>Phase 4: Written submissions on the merits as well as on any preliminary objections pursuant to Article 23(2) of the UNCITRAL Rules not possessing a preliminary character, document production</i>		
To be determined in consultation with the Parties, if applicable		
<i>Phase 5: Hearing on the merits as well as on any preliminary objections pursuant to Article 23(2) of the UNCITRAL Rules not possessing a preliminary character</i>		
To be determined in consultation with the Parties, if applicable		

- 3.2 In the event that the Respondent does not raise a preliminary objection on the basis of Article 11.20(6)(a) of the Treaty but it does raise a preliminary objection on any basis other than Article 11.20(6)(a) and requests bifurcation and the Tribunal denies such a request, the arbitration shall proceed in accordance with the following schedule (**Track B3**):

<i>Phase 1: First-Round Written Submissions</i>		
Amended Statement of Claim	Claimant	4 April 2019
Statement of Defence and Preliminary Objections on a basis other than Article 11.20(6)(a) of the Treaty, together with a request for bifurcation	Respondent	30 August 2019
Observations on the Respondent's request for bifurcation	Claimant	20 September 2019
Decision denying the Respondent's request for bifurcation of preliminary objections	Tribunal	4 October 2019 for decision without reasons, followed on 18 October 2019 by reasoned decision
<i>Phase 2: Document Production and Non-disputing Party Submission</i>		
Document production requests	Parties	8 November 2019
Objections to production	Parties	29 November 2019
Responses to objections (submitted to Tribunal)	Parties	20 December 2019
Voluntary production	Parties	10 January 2020
Notice by non-disputing Party that it intends to file a submission in accordance with Article 11.20(4) of the Treaty	United States	10 January 2020
Tribunal decision on objections	Tribunal	24 January 2020

Involuntary production and completion of voluntary production	Parties	21 February 2020
Non-disputing party submission in accordance with Article 11.20(4) of the Treaty	United States	21 February 2020
<i>Phase 3: Second-Round Written Submissions</i>		
Statement of Reply (and Defence to Preliminary Objections, if any)	Claimant	15 May 2020
Statement of Rejoinder (and Reply to Preliminary Objections, if any)	Respondent	14 August 2020
(Claimant's Rejoinder on Preliminary Objections, if any)	(Claimant)	(2 October 2020)
<i>Phase 4: Hearing</i>		
Notification of Witnesses and Experts to be Cross-Examined	Parties	9 November 2020
Pre-Hearing Conference	All	23 November 2020
Hearing	All	The weeks of 25 January and 1 February 2021

Place of Arbitration: London, United Kingdom



Dr. Veijo Heiskanen
(Presiding Arbitrator)

On behalf of the Tribunal