

**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. 20

The Arbitral Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas QC

Registry

Permanent Court of Arbitration

1 November 2021

The hearing in this arbitration will be held from 15 to 26 November 2021 (the “**Hearing**”). This Order sets out the rules governing the conduct of the Hearing. Subject to the terms of this Order, the Hearing shall otherwise be conducted in accordance with the applicable provisions of Procedural Order No. 1 dated 1 April 2019 (“**PO1**”).

I. ORGANIZATION OF THE HEARING

A. Location

1. The Hearing will take place in the Fairmont Grand Hotel in Geneva, Switzerland. The seat of the arbitration remains London, United Kingdom.

B. Hearing Schedule

2. The Parties’ agreed indicative Hearing Schedule (“**Hearing Schedule**”), approved by the Tribunal on 6 October 2021, is enclosed at Annex A. The Hearing Schedule is subject to any changes that the Tribunal may deem necessary or appropriate for the efficient conduct of the Hearing, including for the purpose of calling back a witness or an expert for further questioning.

C. Hearing Participants

3. Each Party shall inform the PCA and the opposing Party, copying the Tribunal, by midnight CET on 10 November 2021 of the full list of participants who will attend the Hearing on its behalf. The list shall indicate the name of each participant, the participant’s role in the case (e.g., counsel, witness, Party representative, etc.), and whether the participant will be attending the Hearing in person or remotely. For each participant attending in person, the Party should confirm that the individual is fully vaccinated against COVID-19. For each participant attending remotely, the Party should confirm the location from which the individual will join the Hearing.
4. If after 10 November 2021 a Party wishes to supplement or amend its list of participants, the Party will inform the PCA and the opposing Party as soon as practicable.
5. The PCA will arrange for a secure video feed to be established to allow non-speaking participants to attend remotely. In the event that a participant with a speaking role in the Hearing requires a remote connection, the relevant Party shall inform the PCA and the opposing Party as soon as practicable.

D. Time Allocation

6. The Parties’ agreed indicative time allocation for opening statements and witness examination is set out in the Hearing Schedule. As noted therein, the Parties agree that they shall afford each other flexibility in the usage of time throughout, subject to the general principle that the Parties should have roughly equal time.

- a) Questions from the Tribunal, answers to those questions, and procedural interventions by the Tribunal shall not be counted against each Party's allotted time.
 - b) Time spent during any applications during the Hearing will not be counted against each Party's allotted time.
7. The PCA will keep a record of each Party's use of time using the chess-clock method, and report the time used and remaining to the Parties and the Tribunal after each day of the Hearing or whenever so requested.
 8. Any disagreement between the Parties concerning Hearing time is to be dealt with outside sitting hours whenever possible, between the Parties consistently with their agreement to afford each other flexibility, and referred to the Tribunal only as a last resort. The Tribunal's determination regarding any disputes as to the allocation of time not resolved *inter partes* shall be final and binding.

E. Evidence and Documents

9. There shall be no core or hearing bundle. However, the PCA shall arrange for hard copies of key documents, including all Procedural Orders, Chapter 11 of the Treaty, and the UNCITRAL Rules 2013, to be made available to the Tribunal in advance of the Hearing, and shall inform the Parties which documents it has so provided to the Tribunal.
10. Either Party may submit into the record before midnight CET on 3 November 2021 any documents produced pursuant to Procedural Order No. 18, without requesting leave from the Tribunal.
11. Any document added to the record shall be supplemented, within three working days, by a translation of the relevant part(s) of the document to be relied upon.
12. In accordance with paragraph 9.4 of PO1, documents that do not form part of the record may not be presented at the Hearing, except with leave of the Tribunal.

F. Presentations and Demonstratives

13. The Parties may use PowerPoint or other slide presentations for their opening statement and/or any closing statement (if closing statements are directed). Subject to the rule on demonstrative exhibits (such as charts, tabulations, compiling only information already present in the record but not in such form) set out in paragraph 9.4 of PO1, electronic versions of slides to be shown during opening or closing statements shall be circulated by email and in hard copy to the Tribunal, the PCA, the opposing Party, the court reporters and the interpreters shortly before that Party presents its opening/closing statement. The Parties shall submit electronic versions of any demonstratives to be used during the opening statements by email by midnight CET on the day before their use to the Tribunal, the PCA, and the opposing Party.
14. Expert witnesses may use PowerPoint or other slide presentations during their direct examination. The Party presenting the expert witness for cross-examination shall submit electronic versions of

such presentations by email to the Tribunal, the PCA, the opposing Party, the court reporters, and the interpreters by midnight CET on the day prior to the start of their examination, and the Party presenting the expert witness shall provide hard copies to the same individuals immediately prior to the expert's direct examination.

G. Examination of Fact and Expert Witnesses

15. The examination of fact and expert witnesses shall proceed in accordance with paragraphs 7 and 8 of PO1. The order of appearance of fact and expert witnesses and time allocation for each examination is set out in the Hearing Schedule.
16. The Parties shall prepare physical bundles of exhibits to be presented to fact and expert witnesses during cross-examination, in which case the Party shall also provide bundles to the Tribunal, the PCA, the opposing Party, the court reporters and the interpreters. Such bundles shall include copies of the relevant witness statement(s) or expert report(s). Electronic versions of those bundles shall be uploaded to the Opus 2 document management system following the conclusion of the relevant cross examination.

II. HEARING LOGISTICS

H. Presentation of Documents

17. Opus 2 will provide evidence display services during the Hearing, and a representative of Opus will be physically present in the Hearing Room. Any evidence, authority, or demonstrative exhibit is to be presented so that the speaker, the Tribunal, the testifying witness or expert (if during an examination), and the relevant document can be seen simultaneously at all times.

I. Interpretation

18. The PCA has arranged for four interpreters to be retained for the duration of the hearing. By agreement of the Parties, interpretations shall be conducted in the following manner:
 - a) Simultaneous Korean/English interpretation of all oral argument (*i.e.*, not including witness testimony);
 - b) Simultaneous interpretation into Korean of witnesses and experts testifying in English; and
 - c) Consecutive interpretation into English of witnesses/experts testifying in Korean.

J. Transcription

19. Opus 2 will provide court reporting and real-time English transcription. Opus 2 will arrange for all hearing participants to have access to the real-time transcript during the Hearing.

K. Transparency

20. In accordance with Article 11.21.2 of the Treaty, the PCA will arrange for a public viewing room at the Fairmont Grand Hotel Geneva. The PCA will arrange for a delayed broadcast of the Hearing to be shown in the public viewing room, which the PCA will suspend when any information designated as protected information (as defined in Article 11.28 of the Treaty and paragraph 10.4 of PO1) is discussed, if either Party so requests of the PCA in a manner that does not interrupt or otherwise disrupt the proceedings in the main hearing room. The PCA will endeavour to suspend the broadcast of the Hearing without disruption to the proceedings in the main hearing room. Following the Hearing, the PCA will publish the transcripts of the Hearing on the PCA's website. Prior to publication of the transcripts, the PCA will make the transcripts available to the Parties so that the Parties may propose redactions of protected information.

L. Security and Sanitary Concerns

21. The PCA will liaise with the Parties and the Fairmont Grand Hotel Geneva to ensure the physical and IT security of the Hearing, including by way of lockable hearing and breakout rooms and access to a secure wifi network within the Hotel.
22. The Parties shall prepare a draft COVID-19 protocol for the Hearing for the Tribunal's consideration. Each Party shall ensure that its Hearing participants adhere to the COVID-19 Protocol for the duration of the Hearing.

Place of Arbitration: London, United Kingdom



Dr. Veijo Heiskanen
(Presiding Arbitrator)

On behalf of the Tribunal

ANNEX A – HEARING SCHEDULE

**Indicative¹ Hearing Schedule (Based on Geneva Time)
 15 November 2021 to 26 November 2021**

Activity	Time	Indicative Duration	
WEEK 1			
<i>Monday, 15 November 2021</i>			
Housekeeping / Preliminary matters	09:00-9:30	30 mins	
Claimant's opening statement	9:30-10:30	Total: 5 hours 30 mins	
<i>Break</i>	10:30-10:45	15 mins	
Claimant's opening statement	10:45-12:15		
<i>Lunch break</i>	12:15-13:15	1 hour	
Claimant's opening statement	13:15-14:45		
<i>Break</i>	14:45-15:00	15 mins	
Claimant's opening statement	15:00-16:30		
<i>Tuesday, 16 November 2021</i>			
Housekeeping	09:00-09:15	15 mins	
Respondent's opening statement	09:15-10:45	Total: 3 hours 30 mins	
<i>Break</i>	10:45-11:00	15 mins	
Respondent's opening statement	11:00-13:00		
<i>Lunch break</i>	13:00-14:00	1 hour	
Claimant's fact witness examination, Mr. James Smith (Part 1)	Direct examination	14:00-14:05	Direct: 5 mins Re-direct: 15 mins
	Cross-examination	14:05-15:30	
	<i>Break</i>	15:30-15:40	Cross examination (Total): 3 hours 30 mins
	Cross-examination	15:40-17:10	
<i>Wednesday, 17 November 2021</i>			
Claimant's fact witness examination, Mr. James Smith (Part 2)	Cross-examination	09:00-09:35	
	Re-direct	09:35-09:50	
<i>Break</i>	09:50-10:00	10 mins	
	Direct examination	10:00-10:05	

¹ Given the availability of buffer time in this timetable, the Parties agree that they would afford each other flexibility in the usage of time throughout, subject to the general principle that the Parties should have roughly equal time.

Claimant's fact witness examination, [REDACTED] (with consecutive interpretation ²)	Cross-examination	10:05-10:45	Direct: 5 mins Re-direct: 5 mins Cross-examination: 40 mins
	Re-direct	10:45-10:50	
<i>Break</i>		10:50-11:00	10 mins
Claimant's fact witness examination, [REDACTED] (with consecutive interpretation)	Direct examination	11:00-11:05	Direct: 5 mins Re-direct: 5 mins Cross-examination: 40 mins
	Cross-examination	11:05-11:45	
	Re-direct	11:45-11:50	
<i>Break</i>		11:50-12:00	
Claimant's fact witness examination, [REDACTED] (with consecutive interpretation)	Direct examination	12:00-12:05	Direct: 5 mins Re-direct: 5 mins Cross-examination: 40 mins
	Cross-examination	12:05-12:45	
	Re-direct	12:45-12:50	
<i>Lunch break</i>		12:50-13:50	1 hour
Respondent's fact witness examination, Mr. Young-gil Cho (with consecutive interpretation)	Direct examination	13:50-13:55	Direct: 5 mins Re-direct: 15 mins Cross-examination (Total): 3 hours
	Cross-examination	13:55-15:20	
	<i>Break</i>	15:20-15:30	
	Cross-examination	15:30-17:05	
	<i>Break</i>	17:05-17:15	
	Re-direct	17:15-17:30	
<i>Thursday, 18 November 2021</i>			
Claimant's expert witness examination, Prof. Choong-kee Lee (with consecutive interpretation)	Presentation	9:30-10:15	Presentation: 45 mins Re-direct: 20 mins Cross-examination (Total): 3 hours 45 mins
	Cross-examination	10:15-11:00	
	<i>Break</i>	11:00-11:15	
	Cross-examination	11:15-12:45	
	<i>Lunch break</i>	12:45-13:45	
	Cross-examination	13:45-15:15	
	<i>Break</i>	15:15-15:25	
	Re-direct	15:25-15:45	
	Presentation	15:45-16:30	Presentation: 45 mins

² Unless so specified, interpretation will be simultaneous.

Respondent's expert witness examination, Prof. Sung-soo Kim (Part 1) (with consecutive interpretation)	<i>Break</i>	16:30-16:40	Re-direct: 20 mins
	Cross-examination	16:40-17:40	Cross-examination (Total): 3 hours 45 mins
<i>Friday, 19 November 2021</i>			
Respondent's expert witness examination, Prof. Sung-soo Kim (Part 2) (with consecutive interpretation)	Cross-examination	09:30-11:00	(Continued.)
	<i>Break</i>	11:00-11:15	
	Cross-examination	11:15-12:30	
	Re-direct	12:30-12:50	
<i>Lunch break</i>		12:50-13:50	1 hour
Claimant's expert witness examination, Prof. Sang-hoon Lee (with consecutive interpretation)	Presentation	13:50-14:35	Presentation: 45 mins Re-direct: 15 mins
	Cross-examination	14:35-15:20	
	<i>Break</i>	15:20-15:35	Cross-examination (Total): 2 hours
	Cross-examination	15:35-16:50	
	Re-direct	16:50-17:05	
Tribunal to address any outstanding matters and confirm schedule for Week 2		17:05-17:20	15 mins
WEEK 2			
<i>Monday, 22 November 2021</i>			
Claimant's expert witness examination, Prof. Curtis J. Milhaupt	Presentation	09:30-09:45	Presentation: 15 mins Re-direct: 15 mins
	Cross-examination	09:45-11:00	
	<i>Break</i>	11:00-11:15	Cross-examination: 2 hours
	Cross-examination	11:15-12:00	
	Re-direct	12:00-12:15	
<i>Lunch break</i>		12:15-13:15	1 hour
Respondent's expert witness examination, Prof. Kee-hong Bae	Presentation	13:15-13:30	Presentation: 15 mins Re-direct: 15 mins
	Cross-examination	13:30-14:45	
	<i>Break</i>	14:45-15:00	Cross-examination: 2 hours
	Cross-examination	15:00-15:45	
	Re-direct	15:45-16:00	
<i>Tuesday, 23 November 2021</i>			
Claimant's expert witness examination,	Presentation	10:00-10:30	Presentation: 30 mins Re-direct: 30 mins
	Cross-examination	10:30-11:30	
	<i>Break</i>	11:30-11:45	Cross-examination: 4 hours

Mr. Richard Boulton QC	Cross-examination	11:45-13:00	
	<i>Lunch break</i>	13:00-14:00	
	Cross-examination	14:00-15:45	
	<i>Break</i>	15:45-16:00	
	Re-direct	16:00-16:30	
<i>Wednesday, 24 November 2021</i>			
Respondent's expert witness examination, Prof. James Dow	Presentation	10:00-10:30	Presentation: 30 mins Re-direct: 30 mins Cross-examination: 4 hours
	Cross-examination	10:30-11:30	
	<i>Break</i>	11:30-11:45	
	Cross-examination	11:45-13:00	
	<i>Lunch break</i>	13:00-14:00	
	Cross-examination	14:00-15:45	
	<i>Break</i>	15:45-16:00	
	Re-direct	16:00-16:30	
<i>Thursday, 25 November 2021</i>			
[To be used for anything not completed in previous days, for final Tribunal questions/directions or for preparation for Oral Closing Submissions if agreed or directed.]			
<i>Friday, 26 November 2021</i>			
Oral closings (if agreed or directed)	[#TBC]	[#TBC]	
[Available for final Tribunal questions/directions or as otherwise needed]	[#TBC]	[#TBC]	
End of hearing			