

PCA Case No. 2023-67

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT ESTABLISHING
THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA,
SIGNED ON 27 FEBRUARY 2009**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2021**

- between -

ZEPH INVESTMENTS PTE. LTD. (Singapore)

(the “Claimant”)

- and -

THE COMMONWEALTH OF AUSTRALIA

(the “Respondent”, and together with the Claimant, the “Parties”)

**PROCEDURAL ORDER NO. 2
(Claimant’s Interim Measures Application)**

Arbitral Tribunal

Dr. Laurent Lévy (Presiding Arbitrator)

Dr. Charles Poncet

Professor Donald McRae

Secretary of the Tribunal

Dr. Magnus Jesko Langer

Secretariat

Permanent Court of Arbitration

28 March 2024

1. Procedural Background

- 1.1 On 9 October 2023, the Claimant announced its intention to apply for interim measures. During the First Procedural Hearing on 10 October 2023, the Parties agreed to hold a hearing on interim measures.
- 1.2 On 7 November 2023, the Claimant filed an application for interim measures (“IMA”) in accordance with the procedural timetable (“Procedural Timetable”) annexed to the Tribunal’s Procedural Order No. 1 dated 25 October 2023, as revised on 12 December 2023 (“PO1”).
- 1.3 On 29 January 2024, the Respondent submitted its response to the IMA (“IM Response”).
- 1.4 On 12 February 2024: (a) the Claimant withdrew its IMA; and (b) the Tribunal wrote to the Parties (via the PCA), noting the withdrawal of the IMA, vacating the remaining steps in the Procedural Timetable relating to the IMA, including the hearing scheduled for 11 March 2024, and reserving its decision on the question of costs associated with the IMA for a later stage of the proceedings.
- 1.5 Thereafter, the Parties corresponded with the Tribunal regarding the consequences of the withdrawal of the IMA.
- 1.6 On 23 February 2024, the Respondent requested that the Tribunal set out its decisions with respect to the consequences of the withdrawal of the IMA in the form of a Procedural Order.
- 1.7 On 27 February 2024, the Claimant wrote to the Tribunal contending that it was (i) premature to address the question of costs and (ii) any decision on costs should properly be set out in a formal award rather than a procedural order.
- 1.8 On 7 March 2024, the Tribunal reiterated its initial decision to reserve the question of costs associated with the withdrawn IMA for a later stage of the proceedings, and invited the Respondent to set out the basis for its request for a procedural order in relation to the IMA.
- 1.9 On 18 March 2024, the Respondent reiterated its request for a procedural order relating to the withdrawal of the IMA, and enclosed a draft procedural order, for the consideration of the Tribunal and the Claimant, which provided that the question of costs would be reserved for a later stage in the proceedings.

2. Parties’ Requests for Relief in relation to the Interim Measures Application and its Withdrawal

- 2.1 In the IMA, the Claimant asked the Tribunal to order the Respondent to “take all such measures necessary”:
 - “a. to refrain from granting any further environmental offsets or equivalent measures over land or property owned by the Claimant or its subsidiaries;
 - b. to refrain from taking any steps to enforce, invoke or otherwise activate the indemnities contained in the Amendment Act [...] or section 30 of the Amendment Act;
 - c. to ensure that officers and representatives of the Respondent refrain from making public comments or remarks about this arbitration, the Tribunal or the ISDS system in general that may undermine the integrity of the arbitral process, until the arbitration proceedings are complete; and

d. to refrain from accessing or interfering in any way with the Microsoft accounts or other electronic accounts of the Claimant's Representative or those assisting the Claimant's Representative".¹

2.2 The Claimant also sought an order allowing for "any additional measures or relief that [the Tribunal] deems appropriate in the circumstances to preserve the integrity of the arbitration and to allow the Claimant to pursue the arbitration without improper interference by the Respondent".² The Claimant also requested "that the Respondent be ordered to pay the full costs of this Application".³

2.3 The Respondent requested that the Tribunal deny the IMA, and reserved its position on the costs associated with the IMA.⁴

2.4 Given the withdrawal of the IMA, the Tribunal has not considered at all its merits and, without taking any position on the relief sought therein, issues this Order.

3. Order

3.1 The Tribunal:

- (a) notes the withdrawal of the IMA;
- (b) notes the Parties' position on costs, as summarised above in Section 2;
- (c) records that items (iii), (iv) and (v) of the Revised Procedural Timetable are vacated;
- (d) reserves its decision on costs associated with the IMA and its withdrawal for a later stage in these proceedings and will provide the Parties an opportunity to fully set forth their positions on those costs.

So ordered by the Tribunal.



Dr. Laurent Lévy
(Presiding Arbitrator)

On behalf of the Tribunal

¹ IMA, paras. 3(a)-(d), 124(a)-(d).

² IMA, para. 4.

³ IMA, para. 125.

⁴ IMA Response, para. 5.