

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED
IN ACCORDANCE WITH THE UNITED STATES-DOMINICAN REPUBLIC-
CENTRAL AMERICA FREE TRADE AGREEMENT, SIGNED AUGUST 5, 2004
("CAFTA-DR")**

- and -

THE UNCITRAL ARBITRATION RULES 1976

- between -

- 1. TCW GROUP, INC.**
- 2. DOMINICAN ENERGY HOLDINGS, L.P.**

"Claimants"

- and -

THE DOMINICAN REPUBLIC

"Respondent"

(and together with the Claimants, the "Parties")

Procedural Order No. 3

Date: December 16, 2008

By the Arbitral Tribunal

**Prof. Juan Fernández-Armesto
Mr. Mark Kantor
Prof. Karl-Heinz Böckstiegel (President)**

Considering the Parties' agreement to modify the timetable in this matter pursuant to the Claimants' letter of October 17, 2008, and considering the appointment of Mr. Mark Kantor as an arbitrator in this matter in replacement of Professor Thomas Wälde, Procedural Orders No. 1 and 2 are modified by this Procedural Order as indicated in the paragraphs below.

1. Article 3 of Procedural Order No. 1 is modified as follows:

3.5 *Following the tragic death of Professor Thomas Wälde on October 13, 2008, the Claimants have appointed Mr. Mark Kantor in replacement of Professor Wälde by letter dated November 21, 2008.*

Mr. Kantor's contact details are as follows:

*Mr. Mark Kantor, Esq.
Suite 311B
110 Maryland Avenue, N. E.
Washington D.C. 20002
United States of America*

*Telephone: +1 202 544 4953
Facsimile: +1 202 318 9170
E-mail: mkantor@mark-kantor.com*

3.6 *The Tribunal notes that Mr. Kantor has been validly appointed in accordance with CAFTA-DR and the UNCITRAL Arbitration Rules.*

3.7 *Mr. Kantor is and shall remain impartial and independent of the Parties.*

3.8 *The Tribunal further notes that Mr. Kantor is not aware of any objection to his appointment or of any circumstances that would provide grounds of conflict of interest and/or lack of independence or impartiality in respect of matters known to him at the date of Procedural Order No. 3. Mr. Kantor submitted a Disclosure Statement dated November 19, 2008, supplemented by a disclosure to the parties (through the Secretary) by email dated November 27, 2008. By email dated December 1, 2008 and letter dated December 3, 2008, the Respondent informed the Tribunal that it did not intend to challenge Mr. Kantor's appointment on the basis of his Disclosure Statement and supplement.*

2. The other provisions of Article 3 of Procedural Order No. 1 as modified by Procedural Order No. 2 remain valid and unchanged.

3. With the appointment of Mr. Kantor by the Claimants in replacement of Professor Wälde on November 21, 2008, the full Tribunal has now been reconstituted.

4. By letter dated October 17, 2008, the Claimants informed the Tribunal of the Parties' agreement on certain modifications to the timetable in these proceedings.
5. By letter dated October 20, 2008, the Tribunal approved the proposed modification of Article 3 of Procedural Order No. 2, which is hereby amended. For convenience, its full relevant text is restated as follows:

3. Timetable

- 3.3. By Friday, **November 21**, 2008,

Respondent submits a Memorial on Jurisdiction together with all evidence (documents, as well as witness statements and expert statements, if any) Respondent wishes to rely on regarding the issue of jurisdiction in accordance with the sections on evidence below.

- 3.4. By Friday, **February 13**, 2009,

Claimants submit a Counter-Memorial on Jurisdiction together with all evidence (documents, as well as witness statements and expert statements, if any) Claimants wish to rely on regarding the issue of jurisdiction in accordance with the sections on evidence below.

- 3.5. By Friday, **March 20**, 2009,

Any "non-disputing Party" as provided in Article 10.20 § 2 CAFTA-DR may make a written submission and notify the Tribunal if it wishes to make an oral submission regarding interpretation of CAFTA-DR and relevant to the issue of jurisdiction at the Hearing on Jurisdiction. Any submission or notice under this paragraph shall be made in accordance with paragraph 7 of Procedural Order No. 1, as amended in paragraph 2.2 of this Order.

- 3.6. By Friday, **March 20**, 2009,

3.6.1. *Any person that wishes to file a written amicus curiae submission under Article 10.20 § 3 CAFTA-DR and relevant to the issue of jurisdiction may apply for leave from the Tribunal to file such a submission. The applicant for leave shall attach the submission to the application.*

3.6.2. *The application for leave to file an amicus curiae submission shall:*

- (a) *be made in writing, dated and signed by the person filing the application, and include the address and other contact details of the applicant;*

- (b) *be no longer than 5 typed pages;*
- (c) *describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);*
- (d) *disclose whether or not the applicant has any affiliation, direct or indirect, with any disputing party;*
- (e) *identify any government, person or organization that has provided any financial or other assistance in preparing the submission;*
- (f) *specify the nature of the interest that the applicant has in the arbitration;*
- (g) *identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;*
- (h) *explain, by reference to the factors specified in paragraph 3.6.5, why the Tribunal should accept the submission;*
- (i) *be made in a language of the arbitration; and*
- (j) *comply with paragraph 7 of Procedural Order No. 1, as amended in paragraph 2.2 of this Order.*

3.6.3. *The amicus curiae submission filed by the applicant shall:*

- (a) *be dated and signed by the person filing the submission;*
- (b) *be concise, and in no case longer than 20 typed pages, including any appendices;*
- (c) *set out a precise statement supporting the applicant's position on the issues;*
- (d) *only address matters within the scope of the dispute; and*
- (e) *comply with paragraph 7 of Procedural Order No. 1, as amended in paragraph 2.2 of this Order.*

3.6.4. *The Tribunal will set an appropriate date by which the disputing parties and any non-disputing Parties may comment on the application for leave to file an amicus curiae submission.*

3.6.5. *In determining whether to grant leave to file an amicus curiae submission, the Tribunal will consider, among other things, the extent to which:*

- (a) *the amicus curiae submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge*

or insight that is different from that of the disputing parties;

- (b) the amicus curiae submission would address matters within the scope of the dispute;*
- (c) the amicus curiae has a significant interest in the arbitration; and*
- (d) there is a public interest in the subject-matter of the arbitration.*

3.6.6. The Tribunal will ensure that:

- (a) any amicus curiae submission avoids disrupting the proceedings; and*
- (b) neither disputing party is unduly burdened or unfairly prejudiced by such submissions.*

3.6.7. The Tribunal will render a decision on whether to grant leave to file an amicus curiae submission. If leave to file an amicus curiae submission is granted, the Tribunal will set an appropriate date by which the disputing parties may respond in writing to the amicus curiae submission.

3.6.8. The granting of leave to file an amicus curiae submission does not require the Tribunal to address that submission at any point in the arbitration. The granting of leave to file an amicus curiae submission does not entitle the applicant that filed the submission to make further submissions in the arbitration. Amici curiae have no standing in the arbitration, will have no special access to documents filed in the pleading, different from any other member of the public, and their submissions must be limited to allegations, without introducing new evidence.

3.7. The Tribunal takes it that, for the procedure on jurisdiction, no procedure on the production of documents is required. However, as the Parties are not able to exclude the possibility that document requests will be made from either side, the following procedural steps are included:

*3.7.1. By Friday, **February 20**, 2009, the Parties may request disclosure of documents from the other Party (with a copy to the Tribunal).*

*3.7.2. By Friday, **March 6**, 2009, the receiving Party either produces the requested documents or replies by a reasoned objection to the other Party (with a copy to the Tribunal).*

- 3.7.3. *By Friday, **March 13**, 2009, the Parties try to agree regarding disclosure of the documents to which objections have been made.*
- 3.7.4. *By Friday, **March 20**, 2009, insofar as they cannot agree, the Parties may submit reasoned applications to the Tribunal in the form of a so-called Redfern Schedule to order production of the documents.*
- 3.7.5. *By Friday, **March 27**, 2009, the Tribunal decides on such applications.*
- 3.7.6. *By Friday, **April 3**, 2009, the Parties produce documents as ordered by the Tribunal.*
- 3.8. *By Friday, **May 15**, 2009,*
Respondent submits a Rebuttal Memorial on Jurisdiction, together with all further evidence (documents, as well as witness statements and expert statements, if any) Respondent wishes to rely on in accordance with the sections below, but only in rebuttal to the 1st round Memorial of Claimants.
- 3.9. *By Friday, **June 26**, 2009,*
Claimants submit a Rebuttal Memorial on Jurisdiction, together with all further evidence (documents, as well as witness statements and expert statements, if any) Claimants wish to rely on in accordance with the sections below, but only in rebuttal to the 2nd round Memorial of Respondent.
- 3.10. *On Tuesday, September 15, 2009,*
*One day **Hearing on Jurisdiction** in New York City; should examination of witnesses or experts be required, this hearing may be extended to up to three days if found necessary by the Tribunal after consultation with the Parties, and be held September 15-17, 2009.*
- 3.11. *As soon as possible after the Hearing on Jurisdiction, but no later than January 31, 2010, the Tribunal will decide on how it will address the question of jurisdiction and inform the Parties by award, order, or otherwise. At the Procedural Meeting the Parties agreed that Article 10.20 § 9(a) CAFTA-DR does not apply to any decision or award the Tribunal may make on jurisdiction.*

3.12. *As a precaution, the following timetable is established for the case that the Tribunal accepts jurisdiction over all or part of the case:*

3.13. *By Friday, March 26, 2010,*

Claimants submit, updating their Statement of Claim submitted earlier, a 1st round Memorial on the Merits, together with all evidence (documents, as well as witness statements and expert statements if any) Claimants wish to rely on for the merits in accordance with the sections on evidence below.

3.14. *By Friday, May 21, 2010,*

Respondent submits a 1st round Memorial on the Merits, together with all evidence (documents, as well as witness statements and expert statements if any) Respondent wishes to rely on for the merits in accordance with the sections on evidence below.

3.15. *By Friday, July 2, 2010,*

Any “non-disputing Party” as provided in Article 10.20 § 2 CAFTA-DR may make a written submission and notify the Tribunal if it wishes to make an oral submission regarding interpretation of CAFTA-DR and relevant to the merits of the case at the Hearing on the Merits. By the same date, any person that wishes to file a written amicus curiae submission under Article 10.20 § 3 CAFTA-DR and relevant to the merits of the case shall apply for leave from the Tribunal to file such a submission. The applicant for leave shall attach the submission to the application. Any submission or notice under this paragraph shall be made in accordance with paragraph 7 of Procedural Order No. 1, as amended in paragraph 2.2 of this Order and, in the case of amicus curiae submissions, shall be made in accordance with paragraphs 3.6.2 to 3.6.8 of this Order.

3.16. *As the Parties are not able to exclude the possibility that document requests will be made from either side regarding the merits, the following procedural steps are included:*

3.16.1. *By Friday, June 4, 2010, the Parties may request disclosure of documents from the other Party (with a copy to Tribunal).*

3.16.2. *By Friday, June 18, 2010, the receiving Party either produces the requested documents or replies by a reasoned objection to the other Party (with a copy to Tribunal).*

3.16.3. *By Friday, June 25, 2010, the Parties try to agree regarding disclosure of the documents to which objections have been made.*

3.16.4. *By Friday, July 2, 2010, insofar as they cannot agree, the Parties may submit reasoned applications to the Tribunal in the form of a so-called Redfern Schedule to order production of the documents.*

3.16.5. *By Friday, July 9, 2010, the Tribunal decides on such applications.*

3.16.6. *By Friday, July 16, 2010, the Parties produce documents as ordered by the Tribunal.*

3.17. *By Friday, September 3, 2010,*

Claimants submit a Rebuttal Memorial on the Merits with any further evidence (documents, as well as witness statements and expert statements, if any), but only in rebuttal to Respondent's 1st round Memorial on the Merits or regarding new evidence from the procedure for document production above.

3.18. *By Friday, October 22, 2010,*

Respondent submits a Rebuttal Memorial on the Merits with any further evidence (documents, as well as witness statements and expert statements, if any), but only in rebuttal to Claimant's Rebuttal Memorial on the Merits or regarding new evidence from the procedure for document production above.

3.19. *Thereafter, no new evidence may be submitted, unless agreed between the Parties or expressly authorized by the Tribunal.*

3.20. *By Wednesday, November 3, 2010, the Parties submit*

** notifications of the witnesses and experts presented by themselves or by the other Party they wish to examine at the Hearing,*

** and a chronological list of all exhibits with indications as to where the respective documents can be found in the file.*

3.21. *On Wednesday, November 10, 2010, a Pre-Hearing Conference between the Parties and the Tribunal shall be held, if considered necessary by the Tribunal, either in person or by telephone.*

3.22. *As soon as possible thereafter, the Tribunal shall issue a Procedural Order regarding details of the Hearing on the Merits.*

3.23. *Hearing on the Merits*

*Dates: from December 6 to 10, 2010,
and, if found necessary by the Tribunal after consultation with the Parties,
extended to continue from December 13 to 15, 2010.*

Place: New York City

3.24. *By dates set at the end of the Hearing after consultation with the Parties,
Parties shall submit*

* *Post-Hearing Briefs (no new documents allowed)*

* *and Claims for Arbitration Costs.*

On behalf of the Tribunal



Karl-Heinz Böckstiegel
President of the Tribunal