

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc.

v.

Republic of Panama

(ICSID Case No. ARB/16/34)

PROCEDURAL ORDER No. 2

Members of the Tribunal

Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal
Mr. Horacio A. Grigera Naón, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

24 August 2017

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I. PROCEDURAL HISTORY

1. Pursuant to Section 20.1 of Procedural Order No. 1, a pre-Hearing organizational call between the Parties and the President of the Tribunal was held by telephone conference on 18 August 2017 (the “**Pre-Hearing Call**”), in anticipation of the Hearing on Expedited Objections scheduled for 4-6 September 2017 (the “**Hearing**”).
2. During the Pre-Hearing Call, a matter was raised by the President of the Tribunal and discussed with the Parties concerning the timing for oral submissions by the Parties to the Tribunal on certain procedural issues arising out of the Parties’ written submissions on Expedited Objections which were of interest to the Tribunal, and for a determination of the impact of these issues on the conduct of the Hearing.
3. Following the Pre-Hearing Call, on 21 August 2017, the Respondent submitted (i) an application under Section 5.2 of Procedural Order No. 1, for reconsideration by the full Tribunal of the Respondent’s procedural request made during the Pre-Hearing Call that a session be held between the Parties and the three members of the Tribunal before the first day of the Hearing, in order to resolve the procedural evidentiary issues and their impact on the conduct of the Hearing (the “Request for Reconsideration”); and (ii) a further request that “*irrespective of the Tribunal’s ruling*” on the Request for Reconsideration, “*the full Tribunal issue a formal order, identifying the specific questions that the Tribunal would like for the parties to address before opening arguments at the Hearing.*” The Respondent further asked that its request (ii) be addressed “*as soon as possible*” observing that “*the United States may wish to opine on these issues, and has been ordered by the Tribunal to decide by 24 August 2017 whether to make written or oral submissions*” pursuant to Article 10.20(2) of the U.S.-Panama TPA.
4. The present Order addresses the Respondent’s request referred to in (ii) above. The Request for Reconsideration referred to in (i) above will be addressed in a separate order, following receipt of observations from the Claimants, to be received by **Friday, 25 August 2017 at 6:00 PM (EDT)**.

II. ORDER

5. The procedural issues to be addressed by the Parties appear to the Tribunal to be as follows:
 - (1) Should the Tribunal rule on Panama’s objections under Article 10.20(5) of the TPA as a matter of law on assumed facts, applying (either as a matter of law or as a matter of discretion) the approach laid down in Article 10.20(4)(c) or should the Tribunal make final and definitive findings of fact and law in relation to those objections.
 - (2) Does the obligation under Article 10.20(5) to decide on an expedited basis “*any objection that the dispute is not within the Tribunal’s competence*” apply to all objections to competence or only to those that do not require the Tribunal to determine the merits of the Claimants’ substantive claim?

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6. The first issue has been expressly raised by the Claimants in their Response and Rejoinder but the arguments that they have advanced require the Tribunal to consider the second issue.

[Signed]
Lord Nicholas Phillips Baron of Worth
Matravers President of the Tribunal

[Signed] _____ [Signed] _____
Mr. Horacio A. Grigera Naón Mr. J. Christopher Thomas QC
Arbitrator Arbitrator