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

-and-

THE UNCITRAL ARBITRATION RULES 1976

-between-

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

(Claimants)

-and-

THE DOMINICAN REPUBLIC

(Respondent)

RESPONDENT'S REPLY TO AMENDED NOTICE OF ARBITRATION AND STATEMENT OF CLAIM

SIMPSON THACHER & BARTLETT LLP

John J. Kerr, Jr.
Karen E. Abravanel

425 Lexington Avenue
New York, New York 10017-3954
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

Peter C. Thomas

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, D.C. 20004
Telephone: (202) 220-7700
Facsimile: (202) 220-7702

Counsel for the Dominican Republic

Respondent respectfully submits this Reply to Claimants' Amended Notice of Arbitration and Statement of Claim dated June 17, 2008 ("Amended Notice of Arbitration"), pursuant to Section 2.4 of Procedural Order No. 1 dated June 23, 2008. This Reply addresses, in a preliminary manner, the jurisdictional deficiencies of Claimants' claims under the Central America-Dominican Republic-United States Free Trade Agreement ("CAFTA-DR"). Respondent submits this Reply with the understanding that such submission is without prejudice to Respondent's memorials on jurisdiction under Article 10.20 § 4(a) of CAFTA-DR, and/or, to the extent necessary, Respondent's rights with respect to a Statement of Defense and/or memorials on the merits under Article 19 of the UNCITRAL Arbitration Rules. Respondent also reserves all rights to respond to Claimants' substantive allegations at the appropriate time.[1]

1. Claimants' Amended Notice of Arbitration contains numerous jurisdictional defects, each of which is fatal to the Tribunal's jurisdiction under CAFTA-DR. ***First***, Claimants' "investment" in connection with EDE Este, the company responsible for the distribution of electricity in the eastern section of the Dominican Republic, does not have the necessary characteristics to qualify as an investment under CAFTA-DR. CAFTA-DR requires, *inter alia*, "the commitment of capital or other resources" and "the assumption of risk." *See* CAFTA-DR, Art. 10.28. Yet the total amount that Claimants paid for their alleged investment in EDE Este was only ***U.S. $2***. Further, Claimants never intended to commit any capital to EDE Este, and they never did so. Additionally, Claimants purposively structured their acquisition of EDE Este to avoid assuming any legal or financial risk with respect to EDE Este.

[1] Respondent bears no burden at this stage to dispute the allegations in Claimants' Amended Notice of Arbitration. For the avoidance of doubt, however, Respondent denies all of Claimants' allegations.

2. ***Second***, as pleaded, all of the key acts and events identified by Claimants in support of their claim happened before March 1, 2007, the date on which CAFTA-DR entered into force. For the most part, such acts and events pre-date March 1, 2007 by several years. CAFTA-DR expressly states that its provisions relating to investment protection do not apply retroactively. CAFTA-DR, Art. 10.1.3. ("For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement."). Accordingly, the Tribunal must decline jurisdiction over Claimants' claim.

3. ***Third***, Claimants through their affiliates have filed an arbitration under the bilateral investment treaty between France and the Dominican Republic and have served notices of arbitration in two other arbitrations under project contracts, all of which are predicated on virtually identical facts and allegations and seek essentially the same relief as Claimants' Amended Notice of Arbitration. Claimants' pursuit of these other arbitrations is duplicative and abusive, and it violates Article 10.8.2 of CAFTA-DR, which expressly requires Claimants to waive any right to continue other arbitrations based on the same allegations. *See* CAFTA-DR, Art. 10.8.2 (notice of arbitration must be accompanied by written waiver of "any right to initiate or continue . . . any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16").

4. In accordance with the Tribunal's Annotated Agenda for the July 30 Procedural Meeting dated July 7, 2008, Respondent agrees that bifurcation is necessary and appropriate in this case in view of the serious jurisdictional defects apparent on the face of Claimants' Amended Notice of Arbitration and Statement of Claim. *See* Annotated Agenda for Procedural Meeting ¶ 3.1 (providing for "a bifurcation of the proceedings with a separate 1st stage dealing

only with the issue of jurisdiction"). Bifurcation of the proceedings is consistent with CAFTA-DR, which provides for the resolution of Respondent's jurisdictional objections as preliminary questions. *See* CAFTA-DR, Art. 10.20.4 ("[A] tribunal ***shall*** address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.") (emphasis added); *see also* UNCITRAL Arbitration Rules, Art. 21(4).

5. If the Tribunal determines in a jurisdictional award that any part of this dispute should proceed on the merits, Respondent will show, among other things, that it has supported EDE Este with over U.S. $950 million in subsidies, credits, loans and other forms of capital and relief. Additionally, Respondent has provided EDE Este with over U.S. $350 million to cover its cash flow deficits, which EDE Este has consistently acknowledged as debt owed to the Republic.

Dated: July 14, 2008

SIMPSON THACHER & BARTLETT LLP

John J. Kerr, Jr.
Karen E. Abravanel

425 Lexington Avenue
New York, New York 10017-3909
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

Peter C. Thomas

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, D.C. 20004
Telephone: (202) 220-7700
Facsimile: (202) 220-7702

Counsel for the Dominican Republic