

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

TENARIS S.A.,  
29, avenue de la Porte-Neuve  
3<sup>rd</sup> Floor  
L-2227, Luxembourg  
Grand-Duchy of Luxembourg

– and –

TALTA-TRADING E MARKETING  
SOCIEDADE UNIPessoal LDA  
Rua da Alfandega 74-76  
2º andar, sala H  
Funchal, 9000-059  
Ilha de Madeira  
Portugal,

Petitioners,

v.

BOLIVARIAN REPUBLIC OF  
VENEZUELA,  
Ministerio del Poder Popular para Relaciones  
Exteriores  
Oficina de Relaciones Consulares,  
Avenida Urdaneta  
Esquina de “Carmelitas” a “Puente Llaguno”  
Edificio anexo a la Torre “MRE”  
Caracas, 1010  
República Bolivariana de Venezuela,

Respondent.

Civil Action No. \_\_\_\_

**PETITION TO RECOGNIZE AND  
ENFORCE AN ICSID ARBITRATION AWARD**

Petitioners Tenaris S.A. and Talta-Trading e Marketing Sociedade Unipessoal Lda (“Petitioners”), by and through their attorneys, state as follows:

## INTRODUCTION

By this action, Petitioners respectfully seek recognition of an arbitration award pursuant to 22 U.S.C. § 1650a and Article 54 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 (the “ICSID Convention”). The arbitration award (the “Award”) was rendered on December 12, 2016, in favor of Petitioners and against Respondent the Bolivarian Republic of Venezuela (“Venezuela”), following an arbitration conducted under the auspices of the International Centre for Settlement of Investment Disputes (“ICSID”). Petitioners also seek an order enforcing the pecuniary obligations imposed by the Award and entering judgment in Petitioners’ favor requiring Venezuela to pay Petitioners the full value of the Award, with interest and costs as provided therein and with further interest to accrue pursuant to the Award until the date of payment in full, in addition to the costs of this proceeding. A certified English translation of the Award and a certified copy of the Award rendered in Spanish are attached as Exhibit A and Exhibit B, respectively, to the Declaration of Nigel Blackaby in support of the Petition to Recognize and Enforce an ICSID Arbitration Award (“Blackaby Declaration” or “Blackaby Decl.”), dated June 8, 2018.<sup>1</sup>

## THE PARTIES

1. Petitioner Tenaris S.A. (“Tenaris”) is a company incorporated under the laws of the Grand Duchy of Luxembourg with its registered office located at 29, avenue de la Porte-Neuve, 3<sup>rd</sup> Floor, L-2227, Luxembourg, Grand-Duchy of Luxembourg.

2. Petitioner Talta-Trading e Marketing Sociedade Unipessoal Lda (“Talta”) is a company incorporated under the laws of the Republic of Portugal with its registered office

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<sup>1</sup> For the Court’s convenience, the relevant articles of the ICSID Convention are attached as Exhibit C to the Blackaby Declaration.

located at Rua da Alfandega 74-76, 2<sup>o</sup> andar, sala H, Funchal, 9000-059, Ilha da Madeira, Portugal.

3. Respondent is the Bolivarian Republic of Venezuela, a foreign State within the meaning of the Foreign Sovereign Immunities Act (“FSIA”). *See* 28 U.S.C. § 1603(a).

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1330(a), which provides that the United States District Courts shall have original subject matter jurisdiction over any nonjury civil action against a foreign State unless the foreign State is entitled to immunity under 28 U.S.C. §§ 1605-1607 or an applicable international agreement.

5. Venezuela is not entitled to immunity here. Venezuela has waived its immunity for the purpose of this Petition by becoming a party to the ICSID Convention. *See* 28 U.S.C. § 1605(a)(1).<sup>2</sup> In addition, Venezuela is not entitled to immunity because this action seeks to recognize an arbitral award made pursuant to a treaty in force in the United States calling for the recognition and enforcement of arbitral awards – specifically, the ICSID Convention. *See* 28 U.S.C. § 1605(a)(6).

6. This Court also has subject matter jurisdiction over this action pursuant to 22 U.S.C. § 1650a(b), which provides that “[t]he district courts of the United States . . . shall have exclusive jurisdiction over actions” to enforce an ICSID award. The United States is a

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<sup>2</sup> While the arbitration was pending, Venezuela withdrew from the ICSID Convention, effective on July 25, 2012. However, all of the rights of Petitioners and obligations of Venezuela that were at issue in the underlying arbitration, and which Petitioners seek to have recognized and enforced by this Petition, arose before Venezuela’s denunciation took effect and were therefore unaffected by it. *See* Blackaby Decl., Ex. C (ICSID Convention Excerpts), at Art. 72 (“Notice [of denunciation] by a Contracting State . . . shall not affect the rights or obligations under this Convention . . . arising out of consent to the jurisdiction of [ICSID] given by one of them before such notice was received by the depositary.”); *see also* Blackaby Decl. Ex. A (Certified Translation of Award), at ¶¶ 91, 144.

signatory to the ICSID Convention. The Federal Arbitration Act does not apply to this action. *See* 22 U.S.C. § 1650a(a).

7. This Court may exercise personal jurisdiction over Venezuela pursuant to 28 U.S.C. § 1330(b), which provides that the United States District Courts have personal jurisdiction over a foreign State that – like Venezuela in this action – is not entitled to immunity, provided that service of process is effected in accordance with 28 U.S.C. § 1608. Petitioners intend to serve process in a timely manner on Venezuela pursuant to 28 U.S.C. § 1608(a), including, if required, through the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163.

8. Venue is proper in this district under 28 U.S.C. § 1391(f)(4), which provides that a party may bring a civil action against a foreign State in the United States District Court for the District of Columbia.

### **THE DISPUTE AND THE AWARD**

9. Petitioners Tenaris and Talta are Luxembourg and Portuguese companies, respectively, that hold interests in the steel industry. The underlying dispute arose out of Venezuela’s unlawful expropriation of Petitioners’ investments in Tubos de Acero de Venezuela S.A. (“TAVSA”), a company that produced seamless steel pipes, and Complejo Siderúrgico de Guayana, C.A. (“Comsigua”), a company that produced hot briquetted iron, which is a basic input for the production of steel. Venezuela did not compensate Petitioners for the expropriation of their investments in TAVSA and Comsigua.

10. On July 20, 2012, Petitioners filed a Request for Arbitration with ICSID against Venezuela alleging that Venezuela’s actions constituted violations of the bilateral investment

treaty (“BIT”) between Luxembourg and Venezuela, and the BIT between Portugal and Venezuela.

11. An ICSID arbitral tribunal (the “Tribunal”) was constituted on July 18, 2013. The Tribunal comprised three eminent jurists with expertise in international arbitration: Enrique Gómez-Pinzón, appointed by Petitioners; Professor Brigitte Stern, appointed by Venezuela; and Professor Juan Fernández-Armesto, appointed jointly by the parties to serve as President of the Tribunal.

12. After receiving hundreds of pages of briefing, accompanied by exhibits, legal authorities, expert reports, and witness statements, the Tribunal held a hearing in Washington, D.C. over six days in June 2015. At the hearing, Petitioners and Venezuela made legal submissions and examined fact and expert witnesses. Petitioners and Venezuela subsequently submitted post-hearing briefs.

13. On December 12, 2016, the Tribunal issued the Award. The Tribunal concluded unanimously that it had jurisdiction over the dispute and that Venezuela had unlawfully expropriated Petitioners’ investments in violation of the BITs. The Tribunal awarded Petitioners the total amount of US\$137,017,887 as compensation for the unlawful expropriations. The Tribunal also awarded interest on that amount from April 30, 2008, at the LIBOR one-year US Dollar rate plus 4%, to be “redefined every year as from April 30, 2008 onwards” and “compounded on a year-in-arrears basis” until Venezuela makes payment in full. Blackaby Decl. Ex. A (Certified Translation of Award), at ¶ 892. As of June 8, 2018, post-Award interest is calculated to be US\$93,667,529. Finally, the Tribunal ordered Venezuela to reimburse Petitioners US\$3,290,000 for Petitioners’ costs and reasonable legal fees. As of June 8, 2018, the full value of the Award is US\$233,975,416.

14. Venezuela did not satisfy the Award, and never responded to Petitioners' letter of February 8, 2017 demanding payment. Instead, on April 11, 2017, Venezuela filed an Application for Annulment of the Award with ICSID (the "Application"). An *ad hoc* annulment committee (the "Committee") was constituted on October 17, 2017 to rule on the Application.

15. In seeking annulment, Venezuela requested a stay of enforcement of the Award pending the outcome of the Application. When a party seeking annulment requests a stay of enforcement with their application for annulment, the ICSID Convention provides that "enforcement shall be stayed provisionally until the Committee rules on such request." Blackaby Decl. Ex. C (ICSID Convention Excerpts), at Art. 52(5). Petitioners opposed the continuation of the stay and, on February 23, 2018, after two rounds of briefing and a one-day hearing, the Committee lifted the stay.

16. The Committee's decision to lift the stay of enforcement was motivated in large part by the Committee's conclusion that, were Venezuela's Application to fail, Venezuela would still be unlikely to comply with the Award. *See* Blackaby Decl. Ex. E (Decision on the Stay of Enforcement), at ¶ 138. The Committee held that, "in light of the prognosis on future conduct of non-compliance" if the Application were rejected, it would "distort the balance of the Parties' interests as established in the ICSID Convention if it granted a continuation of the stay." Blackaby Decl. Ex. E (Decision on the Stay of Enforcement), at ¶ 143. As of the date of this Petition, enforcement of the Award is not stayed, and Petitioners are permitted to seek enforcement.

17. The parties then proceeded to address the merits of Venezuela's Application. Briefing on Venezuela's Application ended in May 2018, and a hearing on annulment is

scheduled for August 2018. A decision on Venezuela's Application is not expected until several months after the hearing on annulment.

### LEGAL BASIS FOR RELIEF

18. Article 54(1) of the ICSID Convention requires Contracting States to "recognize an award rendered pursuant to [the] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State." Blackaby Decl. Ex. C (ICSID Convention Excerpts), at Art. 54(1).

19. To fulfill this obligation, the United States passed implementing legislation that provides:

An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID] convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the [ICSID] convention.

22 U.S.C. § 1650a(a).

20. The ICSID Convention prevents parties to an ICSID arbitration from challenging an ICSID award in court. *See* Blackaby Decl. Ex. C (ICSID Convention Excerpts), at Art. 53(1). Accordingly, Venezuela may not attack the Award in this proceeding. Thus, because the arbitration was conducted pursuant to the ICSID Convention, Venezuela's only opportunity to challenge the Award is through the ICSID annulment process. Venezuela has done so but, as noted above, that is not a bar to recognition or enforcement when, as here, no stay of enforcement is in place.

**THE AWARD MUST BE RECOGNIZED AND ENFORCED**

21. Petitioners restate and incorporate Paragraphs 1 through 20 as if set forth fully herein.

22. The Award, a binding arbitration award under the ICSID Convention, has been issued in Petitioners' favor.

23. Awards issued pursuant to the ICSID Convention are subject to recognition and enforcement in the United States pursuant to 22 U.S.C. § 1650a.

24. Petitioners are thus entitled to an order recognizing the Award as a judgment pursuant to Article 54 of the ICSID Convention and 22 U.S.C. § 1650a, and enforcing the pecuniary obligations imposed by the Award by entering judgment thereon in the full value of the Award, with ongoing interest to accrue pursuant to paragraph 892(4) and (5) of the Award until the Award is paid in full, in addition to the costs awarded by the Tribunal in the amount of US\$3,290,000 and the costs of this proceeding.

**WHEREFORE**, Petitioners respectfully request that the Court enter an order:

- (a) Recognizing the Award pursuant to 22 U.S.C. § 1650a and Article 54 of the ICSID Convention;
- (b) Enforcing the pecuniary obligations imposed by the Award by entering judgment in favor of Petitioners and against Venezuela in the full value of the Award, *i.e.*,
  - (i) damages awarded by the Tribunal in the amount of US\$137,017,887;
  - (ii) ongoing interest as provided by the Tribunal, accruing until the date of payment in full (calculated to be US\$93,667,529 as of June 8, 2018); and
  - (iii) costs as provided by the Tribunal, in the amount of US\$3,290,000;
- (c) Ordering Venezuela to pay the costs of this proceeding; and



- (d) Granting Petitioners such other and further relief as the Court deems just and proper.

Dated: June 8, 2018

Respectfully submitted,

*By: /s/ Elliot Friedman*

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Elliot Friedman (D.C. Bar No. NY0106)  
Robert J. McCallum (*pro hac vice pending*)

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