

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA, DATED 30 JUNE 2007**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW, 2013**

PCA CASE NO. 2018-51

- between -

**ELLIOTT ASSOCIATES, L.P. (U.S.A.)
(the “Claimant”)**

- and -

**REPUBLIC OF KOREA
(the “Respondent,” and together with the Claimant, the “Parties”)**

PROCEDURAL ORDER NO. 13

The Arbitral Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas QC

Registry

Permanent Court of Arbitration

10 June 2020

I. PROCEEDINGS

1. On 13 January 2020, the Tribunal issued Procedural Order No. 8, setting out the Tribunal's decision regarding the Parties' disputed requests for the production of documents. Pursuant to the Tribunal's order, each Party was directed to prepare a privilege log, which was to identify the grounds for withholding each responsive document from production.
2. On 21 February 2020, the Tribunal issued Procedural Order No. 11, approving a revised procedural timetable agreed by the Parties, which amended *inter alia* the time limits for the Parties' second-round written submissions.
3. On 27 February 2020, the Tribunal issued Procedural Order No. 12, providing clarification regarding the scope of the Parties' document production obligations.
4. On 30 May 2020, the Respondent wrote to the Tribunal, alleging shortcomings in the Claimant's document production and requesting that the Tribunal order the Claimant to (i) produce certain documents that are listed in the Claimant's privilege log without any justification for withholding them; (ii) "provide unredacted copies of documents from Claimant's Document Production for which the relevant legal standards for redacting evidence have not been met;" and (iii) produce specific documents that the Respondent "would have expected to be produced, and which other aspects of Claimant's Document Production demonstrate must exist, as responsive to certain requests ordered by the Tribunal, but which Claimant has failed to produce" (the "**Respondent's Application**").
5. On 1 June 2020, the Claimant requested that the Tribunal issue orders concerning the Respondent's alleged shortcomings in its document production (the "**Claimant's Application**"), including in respect of compliance with the Tribunal's earlier "direction to the Respondent to make best efforts to obtain and produce Documents in the possession, custody or control of the Korean National Pension Service." In view of the upcoming time limit for the Claimant to file its Reply (19 June 2020), the Claimant requested that the Tribunal prioritize the Claimant's requests for further orders in respect of document production and extend the time limit for comments on the Respondent's Application until after the submission of the Claimant's Reply.
6. On 2 June 2020, the Tribunal suspended the time limit for the Claimant's comments on the Respondent's Application and invited the Respondent to comment on the Claimant's Application by 10 June 2020. In addition, the Tribunal invited the Parties to confer with each other with a view to agreeing on an appropriate postponement of the time limits for the second round of written

submissions in order to allow the Tribunal to determine the issues raised in the Parties' Applications.

7. On 5 June 2020, the Claimant informed the Tribunal that the Parties had agreed on a revised timetable, pursuant to which the time limits for the filing of comments on the opposing Party's Application and the Parties' second-round written submissions were amended. The Respondent, by separate correspondence of 6 June 2020, confirmed the Parties' agreement.

II. THE TRIBUNAL'S DECISION

8. In view of the above, the Tribunal decides as follows:
 - (a) The Tribunal approves the procedure and time limits for further submissions with respect to the Claimant's Application and the Respondent's Application, as agreed by the Parties;
 - (b) The Tribunal approves the revised procedural timetable, as agreed by the Parties; and
 - (c) The proceedings shall be conducted in accordance with the revised timetable reproduced in **Annex 1** to the present Procedural Order, subject to further argument by the Parties as may be required in due course as to whether a Rejoinder on Preliminary Objections is warranted.

Place of Arbitration: London, United Kingdom



Dr. Veijo Heiskanen
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1

<i>Phase 1: First-Round Written Submissions</i>		
Amended Statement of Claim	Claimant	4 April 2019
Statement of Defence (and any preliminary objections)	Respondent	27 September 2019
<i>Phase 2: Document Production and Non-disputing Party Submission</i>		
Document production requests	Parties	1 November 2019
Objections to production	Parties	22 November 2019
Responses to objections (submitted to Tribunal)	Parties	13 December 2019
Notice by non-disputing Party that it intends to file a submission in accordance with Article 11.20(4) of the Treaty	United States	6 January 2020
Tribunal decision on objections	Tribunal	10 January 2020
Non-disputing party submission in accordance with Article 11.20(4) of the Treaty	United States	7 February 2020
Voluntary production and involuntary production	Parties	6 March 2020
<i>Claimant's Application of 1 June 2020</i>		
Respondent's Comments on Claimant's Application	Respondent	10 June 2020
Claimant's Reply to Respondent's Comments	Claimant	15 June 2020
Tribunal's Decision	Tribunal	22 June 2020
Respondent's Further Production (if required)	Respondent	3 July 2020
<i>Respondent's Application of 30 May 2020</i>		
Claimant's Comments on Respondent's Application	Claimant	24 July 2020
Respondent's Reply to Claimant's Comments	Respondent	31 July 2020
Tribunal's Decision	Tribunal	7 August 2020
Claimant's Further Production (if required)	Claimant	21 August 2020
<i>Phase 3: Second-Round Written Submissions</i>		
Statement of Reply (and Defence to Preliminary Objections, if any)	Claimant	17 July 2020

Statement of Rejoinder (and Reply to Preliminary Objections, if any)	Respondent	13 November 2020
(Claimant's Rejoinder on Preliminary Objections, if any)	(Claimant)	(23 December 2020)
<i>Phase 4: Hearing</i>		
Notification of witnesses and experts to be cross-examined	Parties	23 November 2020
Pre-Hearing Conference	All	7 December 2020
Hearing	All	The weeks of 25 January and 1 February 2021