

**IN THE MATTER OF AN ARBITRATION UNDER THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF
CHINA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE ON THE
PROMOTION AND PROTECTION OF INVESTMENTS (THE “TREATY”)**

- between -

**ASIAPHOS LIMITED AND NORWEST CHEMICALS PTE LTD
(the “Claimants”)**

and

**PEOPLE’S REPUBLIC OF CHINA
(the “Respondent”)**

(ICSID Case No. ADM/21/1)

**PROCEDURAL ORDER NO. 2
Hearing Organization**

Members of the Tribunal

Dr. Klaus Sachs, President

Dr. Stanimir Alexandrov, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

Secretary of the Tribunal

Geraldine R. Fischer

26 May 2022

I. PROCEDURAL BACKGROUND

1. Pursuant to Section 21 of Procedural Order No. 1 (“**PO1**”), a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 25 May 2022 (the “**Pre-Hearing Conference**”), to discuss outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating in the conference were:

Members of the Tribunal:

Dr. Klaus Sachs, President of the Tribunal
Dr. Stanimir Alexandrov, Arbitrator
Prof. Albert Jan van den Berg, Arbitrator

ICSID Secretariat:

Geraldine R. Fischer, Secretary of the Tribunal

Assistant to the Tribunal:

Ms. Susanne Schwalb

On behalf of the Claimants:

Mr. Arif H. Ali/Dechert LLP
Ms. Kirsten Teo/Dechert LLP
Dr. David L. Attanasio/Dechert LLP
Mr. Kai-Chieh Chan/Dechert LLP
Ms. Anna Avilés-Alfaro/Dechert LLP

On behalf of the Respondent:

Mr. SUN Zhao/Ministry of Commerce
Ms. GUO Jingjian/Ministry of Commerce
Mr. XING Xiusong/Global Law Office
Mr. ZHANG Xin/Global Law Office
Mr. REN Qing/Global Law Office
Ms. WANG Heng/Global Law Office
Ms. LI Yalin/Global Law Office
Ms. HUO Ningxin/Global Law Office
Ms. CHENG Shuang/Global Law Office

2. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on 12 May 2022, and the Parties’ joint

statement of 19 May 2022 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached.

3. A recording of the Pre-Hearing Conference was made available to the Members of the Tribunal and the Parties.
4. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

5. The Hearing will take place virtually through Zoom on 30 June and 1 July 2022. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

B. ORDER OF PROCEEDINGS AND SCHEDULE

6. The Hearing will be held virtually on 30 June and 1 July 2022 at 6:00 EST/12:00 CET/18:00 CST and end at 11:00 EST/17:00 CET/23:00 CST, with a one-hour break from 8:00 EST/14:00 CET/20:00 CST to 9:00 EST/15:00 CET/21:00 CST, respectively.
7. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
8. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION

9. The Hearing will proceed on the principle that the Parties should have equal time to present their case.
10. Time used by the Parties in oral argument shall be attributable to the Party making such argument.

11. *Tribunal Questions*. Time taken by the Tribunal for its own questions during the Parties' oral submission and the answers to those questions shall not be counted against the Parties' time.
12. Time used for housekeeping or to resolve technical difficulties shall not be counted against the Parties' time.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

13. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties.
14. The Parties shall provide, no later than **15 June 2022**, the Electronic Hearing Bundle containing all pleadings and supporting documents and Tribunal's orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. Each document shall be marked at the bottom of each page with the document's name or exhibit number and a page number equal to the page number of the pdf. The Electronic Hearing Bundle shall be organized as follows:

Electronic Hearing Bundle:

01. Pleadings

- A. Claimants
- B. Respondent

02. Witness Statements

- A. Claimants
- B. Respondent

03. Expert Reports

- A. Claimants
- B. Respondent

04. Exhibits

- A. Claimants
- B. Respondent

05. Legal Authorities

- A. Claimants
- B. Respondent

06. Tribunal's Rulings

15. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 14 *supra*, and including a consolidated (non-hyperlinked) index.
16. Prior to the Hearing, the Members of the Tribunal, the Secretary of the Tribunal, the Assistant to the Tribunal and the Parties shall download the Electronic Hearing Bundle from the BOX Case Folder into their own devices to have access to it offline during the remote Hearing. The court reporter will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
17. The Parties shall also distribute the Electronic Hearing Bundle in a USB to be sent by courier no later than **15 June 2022** directly to: (i) each Member of the Tribunal (ii) the Secretary of the Tribunal; and the (iii) Assistant to the Tribunal (to addresses to be communicated by the ICSID Secretariat in due course). The USB shall contain the hyperlinked version of the index
18. At the conclusion of the Hearing and following the submission of any scheduled post-hearing submissions, if requested, the Parties shall also distribute an updated Electronic Hearing Bundle in a USB (PC and Mac compatible) to be sent by courier directly to: (i) each Member of the Tribunal (ii) the Secretary of the Tribunal; and the (iii) Assistant to the Tribunal. The USB shall contain the hyperlinked version of the index and be updated to include exhibits, authorities and demonstratives introduced during the hearing and any post-hearing submissions.

2. Demonstrative Exhibits

19. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
20. Demonstrative exhibits shall be used in accordance with Sections 18.8 of PO1 (reproduced below), with certain adjustments indicated in paragraph 21 *infra*:

“18.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively (preceded by “CD-” for Claimants, and “RD-” for Respondent), and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.”
21. To account for the virtual nature of the Hearing, PO1 Section 18.8 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative exhibit shall be distributed by the Party intending to use it *via* an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Tribunal, the Members of the Tribunal, the Assistant to the Tribunal and the court reporter as necessary no later than **1 (one) hour** *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired. It is advisable to transmit the demonstrative exhibits to the members of the Tribunal and the ICSID Secretary with more than 1-hour notice.
22. In addition, promptly after the conclusion of the hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

3. Electronic Presentation of Evidence

23. Each Party shall present demonstrative exhibits and evidence to the participants in the Hearing *via* the video platform system.
24. Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed downloaded into their own devices and available for access offline.
25. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. Any Hearing participant shall have the technical ability to display a document to all Hearing participants via Zoom, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed.
26. Documents that do not form part of the record may not be presented at the Hearing.

E. AUDIO RECORDING

27. The provision of Section 23.1 of PO1 concerning audio recording (reproduced below) apply.

“23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.”
28. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
29. Except for the court reporter that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

F. TRANSCRIPTION

30. The provisions of PO1, Sections 23.2 and 23.3 concerning transcription (reproduced below) apply, with the adjustments indicated in the following paragraphs.

“23.2. Verbatim transcript(s) in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

23.3. The Parties shall agree on any corrections to the transcripts within a time limit to be fixed by the Tribunal counting from the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.”

31. Real-time court reporting in English shall be made available to the Hearing participants *via* an online link connection to be provided by the court reporter. Hearing participants shall connect to the transcript by opening a link in a browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the hearing day. Participants may access the remote Real-time transcript on a laptop or iPad separate from the device used for Zoom.
32. Each Active Participant should, insofar as possible, email any speaking notes directly to the court reporter prior to the start of each session. The court reporter will be asked to treat these notes as confidential.
33. In accordance with Section 23.3 of PO1, the Parties shall agree on any corrections to the transcripts within 20 days counting from the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement

between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

G. POST-HEARING MEMORIALS AND STATE OF COSTS

34. The provisions of Procedural Order No. 1, Section 24.1 (reproduced below) apply.

“24.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.”

H. VIRTUAL HEARING ARRANGEMENTS

1. Testing

35. The Secretariat will conduct technical tests of the Zoom platform with the Tribunal and each Party in advance of the Hearing. The Secretariat recommends that as many Hearing participants as possible to connect for each test from the same physical location that they intend to use for the Hearing. The date of each test will be communicated in due course.

2. Participants

36. Each Party shall provide its respective List of Hearing Participants (“List of Participants”) by **13 June 2022** using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“Active Participants”), and those who will be passive attendees (“Passive Participants”).

37. For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for Claimant), [R] (for Participants for Respondent). Should there be Participants joining from a common conference room, the conference room connection may be identified as “[C] [R] Conference Room #” as appropriate.

38. Participants will join the videoconference through a “waiting room” to be managed by the Zoom service provider.

39. Access to the videoconference shall be restricted to those included in the List of Participants. All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
40. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate identification of each participant and address any technical contingencies.

3. Connectivity

41. The Parties shall ensure that each of their representatives who will connect to the videoconference use a stable internet connection offering sufficient bandwidth and use a camera and microphone/headset of adequate quality. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference.
42. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
43. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only.

4. Equipment and Set Up

44. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

5. Videoconference Etiquette

45. On the first day of the Hearing, the President will invite each Party to introduce its team. After each Party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak should turn off their video feed and mute their microphones.
46. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the hearing day.
47. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but connecting only their audio (*i.e.* turning their video off).
48. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The service provider serving as host of the videoconference shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
49. To facilitate the accurate transcription speakers are advised to speak at a reasonable speed and with pauses between phrases.
50. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

6. Break-Out Rooms

51. Break-out rooms separate from virtual Hearing Room will be set up for each Party and the Tribunal during breaks.

52. The List of Participants (**Annex B**) shall indicate the break-out room to which Participants shall be assigned, with [C] for the Claimant's break out room, [R] for the Respondent's break out room.
53. Each Party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the technical service provider acting as Zoom Operator.

For and on behalf of the Tribunal,

(Signed)

Dr. Klaus Sachs
President of the Tribunal
Date: 26 May 2022

ANNEX A
HEARING AGENDA

Day 1: 30 June 2022

<i>Hour</i>	<i>Duration</i>	
00:00 AM/PM	(# hours/min.)	
6:00 AM EDT	2 hours	Respondent's Opening Presentation
8:00 AM EDT	1 hour	Break
9:00 AM EDT	2 hours	Claimants' Opening Presentation

Day 2: 1 July 2022

<i>Hour</i>	<i>Duration</i>	
00:00 AM/PM	(# hours/min.)	
6:00 AM EDT	2 hours	Respondent's Closing Presentation
8:00 AM EDT	1 hour	Break
9:00 AM EDT	2 hours	Claimants' Closing Presentation

ANNEX B

LIST OF PARTICIPANTS¹

TRIBUNAL						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Dr. Klaus Sachs	A	V	President	Office Munich, Germany	Email: Klaus.Sachs@ cms-hs.com Phone:
T	[T] – Dr. Stanimir Alexandrov	A	V	Co-arbitrator	Office [City]	Email: salexandrov@ alexandrovla w.com Phone:
T	[T] – Prof. Albert Jan van den Berg	A	V	Co-arbitrator	Home [City]	Email: ajvandenber g@hvdb.com Phone:

SECRETARY OF THE TRIBUNAL						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Geraldine R. Fischer	A	V	Secretary of the Tribunal	Home Tokyo, Japan	Email: gfischer1@w orldbank.org Phone:

¹ Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating virtually will activate their cameras during the Hearing, except as provided in para. [x].

ASSISTANT TO THE TRIBUNAL						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Susanne Schwalb	A	V	Assistant to the Tribunal	Office Munich, Germany	Email: susanne.schwalb@cms-hs.com Phone (mobile):

CLAIMANTS						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>					
C	[C] – Name Last name	A	V		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A	V		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A	V			Email: Phone:
	<i>Party Representative:</i>					
C	[C] – Name Last name	P	V		Home [C] []	

RESPONDENT						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	
	<i>Counsel:</i>					
R	[R] – Name Last name	A	V		Room [Firm] # 1 [R] [Washington, DC]	Email: Phone:
R	[R] – Name Last name	A	V		Room # 1 [R] [Washington, DC]	
	<i>Party Representatives:</i>					
R	[R] – Name Last name	P	V		Home [R] []	
R	[R] – Name Last name	P	V		Home [R] []	

COURT REPORTER				
Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[TRA] [Email/Phone]	P		[City]
N/A		P	Interpreter	[City]

TECHNICAL SUPPORT STAFF				
Room	Name	Role	Affiliation to Case	Location of Connection
N/A	[IT] – Name Last name [Email]	P	[xx]	[xx]

N/A	Pedro Magarino	P	Paralegal, ICSID	Home Washington, D.C.
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