

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ESPÍRITU SANTO HOLDINGS, LP AND LIBRE HOLDING, LLC
Claimants

and

UNITED MEXICAN STATES
Respondent

(ICSID Case No. ARB/20/13)

PROCEDURAL ORDER NO. 13

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

January 30, 2024

I. BACKGROUND

1. Pursuant to Rule 19 of the 2006 ICSID Arbitration Rules, applicable to this arbitration,¹ the Tribunal may “make the orders required for the conduct of the proceeding.”²
2. Under Article 43(a) of the ICSID Convention, the Tribunal may call upon the Parties to produce documents and other evidence if it deems it necessary.³
3. As per Rule 34(3) of the 2006 ICSID Arbitration Rules, the Parties have the obligation to cooperate with the Tribunal in the production of evidence and the Tribunal shall take formal note of the failure of a party to comply with this obligation.⁴
4. The Tribunal recalls that it is a fundamental duty of the expert witnesses to assist the Tribunal in the determination of the technical issues at stake in the arbitration and that the experts of both Parties have a duty to cooperate in good faith to “reach agreement on the issues within the scope of their Expert Reports.”⁵

II. PROCEDURAL HISTORY

5. In Procedural Order No. 11 dated July 3, 2023, the Tribunal instructed the Parties to submit a joint expert report to be prepared by the Respondent’s experts who produced the Armenta Report dated March 7, 2023 (i.e., Angélica Armenta and Francisco Elías Bartolo Sánchez) together with any experts that the Claimants decided to appoint.⁶

¹ Procedural Order No. 1, ¶ 1.1.

² 2006 ICSID Arbitration Rules, Rule 19.

³ ICSID Convention, Article 43(a); 2006 ICSID Arbitration Rules, Rule 34(2)(a).

⁴ 2006 ICSID Arbitration Rules, Rule 34(3).

⁵ IBA Rules on the Taking of Evidence in International Arbitration, Article 5(4).

⁶ Procedural Order No. 11, ¶ 90(c).

6. On September 7, 2023, the Parties submitted a joint expert report authored by Mr. Alejandro Corral Serrano and Mr. Francisco Elías Bartolo Sánchez (the “**Bartolo-Corral Report**”).
7. In Procedural Order No. 12 dated September 13, 2023, the Tribunal noted that “[a]fter preliminary review of the Bartolo-Corral Joint Report, the Tribunal observes with concern the expert’s assertion that ‘no points of agreement exist’ between them on the authenticity analysis of the documents that were the subject to the Armenta-Bartolo Report, i.e. exhibits C-0007, C-0009, C-0018, C-0019 and C-0055, and of the documents used in the Armenta-Bartolo Report for such analysis, including exhibits FEBS-0017-SPA through FEBS-0046-SPA.”⁷
8. The Tribunal further noted that it “reserves the right to submit questions to the experts before the Hearing, order the submission of additional documents and order an expert conferencing at the Hearing pursuant to Section 18.4.8. of Procedural Order No. 1, without prejudice to the Parties’ right to cross-examine the experts.”⁸

III. THE TRIBUNAL’S CONSIDERATIONS

9. Having carefully reviewed the Bartolo-Corral Report, the Tribunal considers that it falls short in addressing relevant questions that the experts could have considered in the determination of the authenticity of the signatures contained in exhibits C-0007, C-0009, C-0018, C-0019 and C-0055.
10. Consequently, the Parties are directed to instruct their experts to jointly prepare a supplementary report to the Bartolo-Corral Report in order to respond to the following questions:
 - a. If the Tribunal were to conclude that the documents reviewed by both experts for comparison (FEBS-0017 to FEBS-0046) are unquestionable

⁷ Procedural Order No. 12, ¶ 94.

⁸ Procedural Order No. 12, ¶ 97.

(*indubitados*), what would be the *technical* conclusion on the authenticity of the signatures contained in C-0007, C-0009, C-0018, C-0019 and C-0055?

- b. Aside from the issue of **unquestionability**, according to *international technical standards of graphoscopy*, what are the requirements that a document to be compared with another document must meet in order to determine the authenticity of a signature?
11. In Procedural Order No. 12, the Tribunal took note of “Mr. Corral’s allegation that the originals of exhibits FEBS-0021-SPA, FEBS-0022-SPA, FEBS-0023-SPA, and FEBS-0024-SPA, were not provided in their complete version during the inspection.”⁹ For purposes of the supplementary joint report, both experts must be provided with access to complete versions of the aforementioned documents.
12. The Tribunal stresses that it is interested in strictly technical (not legal) opinions and conclusions. Therefore, the answers shall be limited to technical aspects of graphoscopy and documentoscopy, and neither the experts nor counsel may make legal arguments in the supplementary report.
13. If the experts disagree in all or part of the responses, they must briefly state the technical reasons for their disagreement.
14. As mandated in Procedural Order No. 11, the experts must limit their analysis to the documents used in both the Armenta-Bartolo and the Bartolo-Corral Reports, *i.e.*, “the originals of exhibits FEBS-0017-SPA through FEBS-0046-SPA, and the originals of the Claimants’ exhibits inspected from October 31 to November 3, 2022”¹⁰ that are already in their power.

⁹ Procedural Order No. 12, ¶ 96.

¹⁰ Procedural Order No. 11, ¶ 90(c).

15. The joint supplementary report addressing the questions in paragraph 10 above must be submitted on or before **February 20, 2024**.
16. The Tribunal reserves the right to make further questions to the experts on the subject-matter of their reports at any stage after the submission of the requested supplementary report or during the Hearing, in accordance with Section 20.5 of Procedural Order No. 1.¹¹

IV. DECISION

17. Based on the foregoing reasons, the Tribunal orders the Parties to instruct their experts to jointly prepare a supplementary report to the Bartolo-Corral Report to address the questions set out in paragraph 10 of this Procedural Order **by February 20, 2024**.

For and on behalf of the Tribunal,

[Signed]

Mr. Eduardo Zuleta Jaramillo
President of the Tribunal
Date: January 30, 2024

¹¹ Procedural Order No. 1, ¶ 20.5.