

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
Washington DC

Italba Corporation

v.

Oriental Republic of Uruguay

(ICSID Case No. ARB/16/9)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Rodrigo Oreamuno, President of the Tribunal

Mr. John Beechey, Arbitrator

Prof. Zachary Douglas, Q.C., Arbitrator

Assistant to the President of the Tribunal

Ms. Maria Jose Rojas

Secretary of the Tribunal

Ms. Marisa Planells-Valero

July 29, 2016

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Introduction

The first session of the Tribunal was held on July 26, 2016, at 11:05 a.m. (EDT), by telephone conference. The session was adjourned at 11:35 a.m. (EDT).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Mr. Rodrigo Oreamuno, President of the Tribunal
Mr. John Beechey, Arbitrator
Prof. Zachary Douglas, Arbitrator
Ms. Maria Jose Rojas, Assistant to the President of the Tribunal

ICSID Secretariat

Ms. Marisa Planells-Valero, Secretary of the Tribunal

Participating on behalf of the Claimant

- Counsel:

Mr. Alexander Yanos, Hughes Hubbard & Reed LLP
Ms. Fara Tabatabai, Hughes Hubbard & Reed LLP
Mr. Pavlos Petrovass, Hughes Hubbard & Reed LLP
Ms. Rebeca Mosquera, Hughes Hubbard & Reed LLP

Participating on behalf of the Respondent

- Counsel:

Mr. Paul Reichler, Foley Hoag LLP
Mr. Luis Parada, Foley Hoag LLP
Ms. Melinda Kuritzky, Foley Hoag LLP
Ms. Patricia Cruz Trabanino, Foley Hoag LLP

- Parties:

Dr. Miguel Toma, Secretary of the Presidency of the Oriental Republic of Uruguay
Dr. Nicolás Cendoya, Director, URSEC
Dr. Carlos Mata, International Legal Counsel, Ministry of Foreign Affairs
Dra. Inés Da Rosa, Legal Advisor, Presidency of the Republic
Dra. Nancy Aguilar, Legal Advisor, Ministry of Foreign Affairs
Dra. Malena Díaz, Legal Advisor, Ministry of Finance and Economy
Dra. Marianela Bruno, Legal Advisor, Embassy of Uruguay in the United States

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on June 28, 2016.
- The Draft Procedural Order circulated by the Tribunal Secretary on June 28, 2016 and July 22, 2016 (revised); and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on July 19, 2016 and July 25, 2016 indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

Convention Article 44; US-Uruguay BIT Article 24.5

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent modified by the Treaty between the United States of America and the Oriental Republic of Uruguay Concerning the Encouragement and Reciprocal Protection of Investment (the "US-Uruguay BIT").

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on May 27, 2016 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on May 27, 2016.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
 - 3.1. The fees and expenses of each Tribunal member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
 - 3.5. Each member of the Tribunal shall receive a fee equivalent to 25% of the daily sitting fee for the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than four weeks prior to commencement of the hearing. If the postponement or cancellation of a hearing is at the request of only one party, that party shall cover the fee for the cancellation or postponement.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of all Members of the Tribunal, including by any appropriate means of communication, constitutes a quorum for its sittings.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the members of the Tribunal.

- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may decide procedural matters without consulting the other members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.
6. Power to Fix Time Limits
Arbitration Rule 26(1)
- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
 - 6.2. In exercising this power, the President shall consult with the other members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
7. Secretary of the Tribunal
Administrative and Financial Regulation 25
- 7.1. The Tribunal Secretary is Ms. Marisa Planells-Valero, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
 - 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Marisa Planells-Valero
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-9273

Fax: + 1 (202) 522-2615
Email: mplanellsvalero@worldbank.org
Paralegal email: fsanchez1@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Ms. Marisa Planells-Valero
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Appointment of the Assistant to the President of the Tribunal

8.1. By letter of June 27, 2016, the President explained to the parties that he considered that it would benefit the overall cost and time efficiency of the proceedings if the President had an assistant. The President proposed, with the approval of the other members of the Tribunal, that Ms. Maria Jose Rojas, a national of Costa Rica and an associate at Facio & Cañas be appointed as assistant to the President. Ms. Rojas’ *curriculum vitae* was distributed to the parties.

8.2. The President further explained that the assistant would (i) undertake only such specific tasks as are assigned to her by the President, such as the organization of case documents; and (ii) be subject to the same confidentiality obligations as the Members of the Tribunal and sign a declaration to that effect. Mr. Rojas’ services as assistant to the President would be provided at no cost to the parties.

8.3. The parties approved the appointment of Ms. Rojas as assistant to the President by communications of June 28, 2016.

8.4. On July 14, 2016, Ms. Rojas signed the declaration of confidentiality. On July 15, 2016, the Secretary of the Tribunal transmitted a copy of the signed declaration to the parties and the Tribunal.

9. Representation of the Parties
Arbitration Rule 18

9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

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For Claimant

Mr. Alexander Yanos
Ms. Fara Tabatabai
Mr. Pavlos Petrovas
Ms. Rebeca Mosquera
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004

For Respondent

Dr. Miguel Toma
Secretario de la Presidencia de Uruguay
Secretaria de Presidencia
Torre Ejecutiva, Plaza Independencia 710
CP 11000 Montevideo
Uruguay
and
Dr. Nicolás Cendoya, Director
Unidad Reguladora de Servicios de
Comunicaciones de Uruguay (URSEC)
Uruguay 988
CP 10100 Montevideo
Uruguay
and
Mr. Rodolfo Nin Novoa
Ministro de Relaciones Exteriores de
Uruguay
Colonia 1206, 6to piso
Montevideo
Uruguay
and
Embassy of Uruguay, Washington, D.C.
1913 I Street NW
Washington D.C. 20006
USA
and
Mr. Paul S. Reichler
Mr. Luis Parada
Foley Hoag LLP
1717 K Street, N.W.
Washington D.C. 20006
USA

10. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

10.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10.2. By letter of May 31, 2016, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received the Respondent's payment on July 12, 2016 and the Claimant's payment on July 18, 2016.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

11.1. Washington, D.C. shall be the place of the proceeding.

11.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

12.1. English and Spanish are the procedural languages of the arbitration.

12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

[For Parties' Pleadings]

12.3. Written requests and applications from the parties may be in either procedural language, provided that a translation of such document to the other procedural language is filed within 3 consecutive days thereafter. However, should the party filing the request or application require immediate reaction from the Tribunal, such request or application will have to be filed simultaneously in both procedural languages.

12.4. Pleadings, expert opinions, witness statements, and any other accompanying documentation shall be submitted in one procedural language, provided that a translation of such document to the other procedural language is filed within 21 days thereafter.

12.5. Translations provided need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.

12.6. Documents exchanged between the parties under Section 16 below (Production of Documents) may be produced in the original language and need not be translated.

[For Hearing]

12.7. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English and Spanish languages shall be interpreted simultaneously. The parties also agree that simultaneous interpretation into Spanish or English will be provided at the hearing.

12.8. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see Section 22 below), which witnesses or experts require interpretation.

12.9. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

[For Tribunal's Documents Except the Award]

12.10. The Tribunal may initially make any order or decision in one procedural language and subsequently issue that order or decision in the other procedural language. Both versions shall be equally authentic.

[For Tribunal's Award]

12.11. The Tribunal shall render the Award in English and Spanish simultaneously. Both versions shall be equally authentic.

13. Routing of Communications
Administrative and Financial Regulation 24

13.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

13.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.

13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.

13.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

14.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version without exhibits of the pleadings, witness statements, expert reports, and a list of exhibits.¹ By the end of the second business day following the relevant filing date, the parties shall upload these documents with exhibits to the file sharing platform that will be created by ICSID for purposes of this case.

14.2. Four business days following the email filing, the parties shall courier to the Tribunal Secretary:

14.2.1. one unbound hard copy in Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities); and

14.2.2. one hard copy in letter format of the entire submission including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities).

14.3. Also four business days following the email filing, the parties shall courier to the opposing party at the address(es) indicated at Section 9.1 above, and to each Member of the Tribunal at the addresses indicated at Section 14.6 below, hard copies of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities). The parties are to send hard copies in Letter format for Mr. Oreamuno, and hard copies in A5 format for Mr. Beechey and Prof. Douglas.³

14.4. Four business days following the email filing, the parties shall courier to the Tribunal Secretary two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, exhibits, and legal authorities.

14.5. Also four business days following the email filing, the parties shall courier to the opposing party at the address(es) indicated at Section 9.1 above, to each Member of the Tribunal, at the addresses indicated at Section 14.6 below one minimum USB

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The Letter format is required for ICSID's archiving.

³ Double-sided, spiral bound and in soft covers.

drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits, and legal authorities.

14.6. The addresses of the Tribunal Members are as follows:

Mr. Rodrigo Oreamuno
Facio & Cañas
Oficentro Torres del Campo,
frente al Centro Comercial El
Pueblo, 2a torre, 3er piso,
Barrio Tournón
San Francisco de Goicoechea,
San Jose –
1000 Costa Rica
P.O. Box 5173-1000
Phone: +506 2255 2626

Mr. John Beechey
Arbitration Chambers Hong
Kong
Chinachem Hollywood
Centre
1 Hollywood Road, Suite 803
Hong Kong S.A.R., China
Phone: +852 2140 6555
+44 7785 700 171

Prof. Zachary Douglas
Matrix Chambers
9 Rue de Candolle
1205 Geneva
Switzerland
Phone: +44 (0)20 7404 3447

14.7. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

14.8. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

14.9. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation. The hyperlinked index should be included in the USB, CD-ROM or DVD submission of the pleading presented four working days following the submission and it shall be uploaded to the file sharing platform at the same time.

14.10. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

14.11. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

15.1. The schedule shall be as follows:

15.1.1. The Claimant shall file a Memorial no later than September 16, 2016.

15.1.2. Within 30 days after the date the Claimant files its Memorial, the Respondent shall inform the Claimant and the Tribunal as to whether it intends to raise objections to jurisdiction under ICSID Arbitration Rule 41(1) and wishes to request that all or some of these objections be heard separately from the merits

of the case (*i.e.*, a request for bifurcation under ICSID Arbitration Rule 41(3)).

15.1.2.1. If the Respondent interposes separate jurisdictional objections as described above in Section 15.1.2, the Respondent shall file its objections no later than 60 days after the date the Claimant files its Memorial. The Tribunal shall make its best efforts to decide within 15 days after the Respondent files its objections whether all or some of these objections will be heard separately from the merits of the case. If the Tribunal decides to hear all or some of the objections separately from the merits, the Tribunal shall set a schedule for briefing such objections. If the Tribunal decides not to hear all or some of the objections separately from the merits, the Respondent shall file a Counter-Memorial no later than 100 days after the date the Tribunal issues its decision.⁴

15.1.2.2. If the Respondent does not interpose separate jurisdictional objections as described above in Section 15.1.2, the Respondent shall file a Counter-Memorial no later than 120 days after the date the Claimant files its Memorial.

15.1.2.3. The Claimant shall file a Reply no later than 90 days after the date the Respondent files its Counter-Memorial. The Tribunal, in its discretion and at the request of Claimant, may adjust the deadline to 120 days for the Reply if a lengthy document request and exchange process takes place following the filing of the Respondent's Counter-Memorial.

15.1.4 The Respondent shall file a Rejoinder no later than 90 days after the date the Claimant files its Reply.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

Requests for Production

16.1 The parties shall exchange requests for production of documents simultaneously, if any, no later than 14 days after the date the Respondent files its Counter-Memorial (each a "Request to Produce"). If the arbitration is organized into separate issues or phases (such as jurisdiction, preliminary determinations, liability, or damages), the Tribunal may, after consultation with the parties, schedule the submission of documents and Requests to Produce separately for each issue or phase. The

⁴ The Tribunal will be prepared to consider a request for a reasonable extension of time at the appropriate procedural time.

requests shall be recorded in a joint schedule (populating columns 1 through 4) in the form below. Such requests shall not be sent to the Tribunal or the ICSID Secretariat.

16.2 A Request to Produce shall contain:

16.2.1 a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist (in the case of documents maintained in electronic form, the requesting party may, or the Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such documents in an efficient and economical manner);

16.2.2 a statement as to how the documents requested are relevant to the case and material to its outcome; and

16.2.3 a statement that the documents requested are not in the possession, custody, or control of the requesting party or a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such documents; and

16.2.4 a statement of the reasons why the requesting party assumes the documents requested are in the possession, custody, or control of another party.

16.3 The party to whom the Request to Produce is addressed shall produce to the other party within 30 days of receipt of a Request to Produce (and, if the Tribunal so orders, to the Tribunal) all of the requested documents in its possession, custody, or control as to which it makes no objection.

16.4 Each party shall state its response to each request and any objections to any request within 30 days after the parties exchange requests for productions. Such responses and objections shall be recorded in column 5 of the joint schedule following the format below:

1	2	3	4		5	6	7
No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			

- 16.5 Each party shall respond to these objections within 14 days of receiving them. Such responses shall be recorded in column 6 of the schedule above. Each party shall provide the other party and the Tribunal with the completed schedule (in both Word and PDF formats).
- 16.6 The disclosure of documents under this Part shall be made electronically through a file sharing platform which can be accessed by counsel to the parties, in PDF format or some other similar format to which the parties may later agree. Each party shall provide the other party, on the date of the production, with an index of the documents that it is producing.
- 16.7 Documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this, or any subsequent, Procedural Order.
- 16.8 Other requests for the production of documents sought by either party, if any, shall be permitted only in exceptional circumstances and at the discretion of the Tribunal. The request must be substantiated with reasons. Nothing herein shall prevent a party from seeking voluntary production of documents from the other party prior to or following the dates set forth in this Section.
- 16.9 The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

Objections to Requests for Production

- 16.10 The parties and the Tribunal may hold a conference call on the parties' objections to Requests to Produce. The Tribunal may also invite the relevant parties to consult with each other with a view to resolving the objections.
- 16.11 Where a party objects to the production of certain documents, the Tribunal shall make its best efforts to rule on the objections within 14 days following the requesting party's reply to the objections, or within 14 days following a conference call pursuant to Section 16.10 above (whichever date is later). Any such document shall be produced to the other party and, if the Tribunal so orders, to it.
- 16.12 A party shall produce the documents ordered by the Tribunal within 10 days of the ruling.
17. Weighing the Evidence
- 17.1 The Tribunal shall determine the admissibility, relevance, materiality, and weight of evidence.

- 17.2 The Tribunal may refer to the 2010 IBA Rules on the Taking of Evidence in International Arbitration as a nonbinding reference in deciding on disputed evidentiary issues.
- 17.3 The Tribunal shall, at the request of a party or on its own motion, exclude from evidence or production any document, statement, oral testimony, or inspection for any of the following reasons, including but not limited to:
- 17.3.1 lack of sufficient relevance to the case or materiality to its outcome;
 - 17.3.2 legal impediment or privilege under the legal or ethical rules determined by the Tribunal to be applicable;
 - 17.3.3 unreasonable burden to produce the requested evidence;
 - 17.3.4 loss or destruction of the document that has been shown with reasonable likelihood to have occurred;
 - 17.3.5 grounds of commercial or technical confidentiality that the Tribunal determines to be compelling;
 - 17.3.6 grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Tribunal determines to be compelling; or
 - 17.3.7 considerations of procedural economy, proportionality, fairness, or equality of the Parties that the Tribunal determines to be compelling.
- 17.4 In considering issues of legal impediment or privilege under Section 17.3.2 above, and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Tribunal may take into account:
- 17.4.1 any need to protect the confidentiality of a document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
 - 17.4.2 any need to protect the confidentiality of a document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;
 - 17.4.3 the expectations of the parties and their advisors at the time the legal impediment or privilege is said to have arisen;
 - 17.4.4 any possible waiver of any applicable legal impediment or privilege by

virtue of consent, earlier disclosure, affirmative use of the document, statement, oral communication, or advice contained therein, or otherwise; and

17.4.5 the need to maintain fairness and equality as between the parties, particularly if they are subject to different legal or ethical rules.

17.5 The Tribunal may, where appropriate, make necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection.

17.6 If a party fails without satisfactory explanation to produce any document requested in a Request to Produce to which it has not objected in due time or fails to produce any document ordered to be produced by the Tribunal, the Tribunal may make the inferences that it considers appropriate for the situation.

17.7 If a party fails without satisfactory explanation to make available any other relevant evidence, including testimony, in response to a request to which it has not objected in due time or fails to make available any evidence, including testimony, ordered by the Tribunal to be produced, the Tribunal may make the inferences that it considers appropriate for the situation.

18. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

18.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties solely in rebuttal shall be submitted with the Reply and Rejoinder.

18.2. The documents shall be submitted in the manner and form set forth in Section 14 above.

18.3. Introduction by a party of evidentiary materials following the filing of the last written submission will be permitted only in exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party. Any such request shall not attach the new evidentiary materials. If the Tribunal admits the new evidentiary materials, the opposing party shall be allowed to submit evidence in rebuttal.

18.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

18.5. Exhibits shall be submitted in the following form:

- 18.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 18.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 18.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 18.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 18.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-001” and “R-001,” respectively.
- 18.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 18.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 18.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided that they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, 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 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.
19. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 19.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 19.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations

from the other party (following the procedure outlined in Section 18.3).

- 19.3. All witness statements or expert reports shall be signed and dated by the submitting factual witness or expert witness; it being understood that signed originals shall include documents with authorized electronic signatures.

20. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

- 20.1. Eight weeks before the hearing, each party will identify the factual witnesses and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Shortly after the parties' notifications, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question, if any. The fact that a party does not call a witness or expert whose statement has been submitted with the other party's written submissions does not mean that it accepts the substance or content of the statement or expert opinion.
- 20.2. If a witness is unable to appear personally at the hearing on the merits for reasons of health or force majeure, the Tribunal may permit alternative arrangements (such as videoconference facilities), upon consultation with the parties.
- 20.3. If a witness fails to appear for cross-examination without reasonable cause, the Tribunal may in its discretion make the inference it regards as appropriate under the circumstances, including disregarding the witness' statement.
- 20.4. Witnesses and experts shall be examined by each party under the control of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 20.5. Witnesses or experts giving oral evidence shall first be asked to confirm their statement or report and may then be examined by counsel for the party that is presenting the witness or expert for a brief "examination-in-chief." The "examination-in-chief" may not introduce any matters not already discussed in the written statement or expert report, save in response to new matters raised in the Rejoinder. The witness or expert may then be examined by counsel for the opposing party ("cross-examination"), and subsequently by counsel for the party offering the witness or expert, limited to matters that arose during cross-examination ("re-direct examination"). The Tribunal may at its discretion allow re-cross examination and re-redirect. The members of the Tribunal shall have the right to pose questions during or after the examination of any witness or expert. In addition, an expert may present a brief summary of his written testimony prior to questioning by counsel.

- 20.6. Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. Expert witnesses shall be allowed in the hearing room at any time.
- 20.7. Other matters regarding hearings shall be addressed at the pre-hearing organizational meeting.
21. Submissions of the Non-Disputing Party
US-Uruguay BIT Article 28.2
- 21.1. The non-disputing Party is entitled to make oral and written submissions to the Tribunal regarding the interpretation of the US-Uruguay BIT, within a time frame to be fixed by the Tribunal.
22. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 22.1. If the Tribunal considers it necessary, a pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties, at least eight weeks before a hearing, by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
23. Hearings
Arbitration Rules 20(1)(e) and 32; US-Uruguay BIT Article 29.2
- 23.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The hearing shall be held at a place to be determined in accordance with Section 11 above.
- 23.3. The hearing shall not take place before 12 weeks after the filing of the last written submission.
- 23.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 23.5. The allocation of time between the parties at the hearing shall be determined at the pre-hearing conference.
- 23.6. Hearings will be open to the public.

24. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

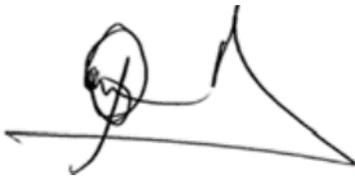
- 24.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 24.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall 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.
- 24.3. The parties shall agree on any corrections to the transcripts within 60 days of 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.

25. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

- 25.1. At the close of proceedings, the Tribunal shall determine the schedule for post-hearing briefing, to the extent the Tribunal requires such briefing.

26. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); US-Uruguay BIT Article 29.1

- 26.1. The parties consent to ICSID publication of the documents listed in Article 29.1 of the US-Uruguay BIT.



Mr. Rodrigo Oreamuno
President of the Tribunal
Date: July 29, 2016