

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

**ADEL A HAMADI AL TAMIMI V. SULTANATE OF OMAN
(ICSID CASE No. ARB/11/33)**

PROCEDURAL ORDER No. 12

Professor David A. R. Williams QC, President of the Tribunal
Judge Charles N. Brower, Arbitrator
Mr. J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Mr. Monty Taylor

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1. INTRODUCTION

- 1.1. By letter dated 22 September 2014, the United States of America, a non-disputing party, filed a submission on two issues of treaty interpretation (“**the Submission**”) as was its right under Article 10.19.2 of the US–Oman Free Trade Agreement (“**the FTA**”).¹
- 1.2. By letter dated 24 September 2014, the Claimant objected to the Submission on the grounds that (a) it was out of time; and/or (b) it exceeded the US’ permitted scope of participation under the FTA. Claimant sought leave to respond to the Submission.
- 1.3. By letter dated 26 September 2014, the Respondent expressed its view that no response was needed given that (a) allowing the Submission would cause no prejudice to the Claimant; and (b) the Submission was directed to issues of treaty interpretation only.
- 1.4. By letter dated 29 September 2014, the US argued that its Submission was neither untimely nor outside the scope of Article 10.19.2.
- 1.5. The Tribunal has conferred on the issues raised by the Submission and directs as follows.

2. LATENESS OF SUBMISSION

- 2.1. Whilst Article 10.19.2 of the FTA imposes no restriction on the timing of submissions made pursuant to that Article, the Tribunal considers that it has a discretion under Rule 25 of the ICSID Rules to apply, if called for in the circumstances, a time limit on the making of submissions by non-disputing parties.² In that connection, the Tribunal further considers that only submissions filed within a reasonable time period after the hearing should be accepted for consideration. The Tribunal needs to have regard to all relevant factors in determining whether a submission is not made within a reasonable time.
- 2.2. In this case, the Tribunal considers the Submission was made within a reasonable time. Any delay was due to the Respondent’s failure to deliver the relevant materials to the US promptly after the hearing.
- 2.3. Therefore, the Submission is to form part of the Record in this case and the Tribunal accepts the Submission for consideration in this arbitration.

¹ Article 10.19.2, FTA: “The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.”

² Rule 25(1), ICSID Rules: “Where required, time limits shall be fixed by the Tribunal by assigning dates for the completion of various steps in the proceeding.”

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3. TRIBUNAL'S RULING: COMMENTS ON THE SUBMISSION

- 3.1. For the reasons given above, the Tribunal directs that the Submission be received as part of the Record.
- 3.2. On **Monday, 27 October 2014** at 5pm local time, the Parties shall exchange memoranda not greater than ten (10) pages in length discussing (a) whether the Submission falls within the scope of Article 10.19.2; and (b) the substance of the Submission and its relevance, if any, to this case.
- 3.3. Thereafter the Tribunal will, as part of its deliberations, decide what weight, if any, is to be given to the Submission.

[Signed]

On behalf of the Tribunal
Professor David A. R. Williams QC
President of the Tribunal
Date: 14 October 2014